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8 Attorneys for the Official Committee of  
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9 **UNITED STATES BANKRUPTCY COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**  
11 **SAN FRANCISCO DIVISION**

12 In re  
13 THE ROMAN CATHOLIC ARCHBISHOP  
OF SAN FRANCISCO,  
14  
15 Debtor.  
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18  
19  
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21

Case No. 23-30564

Chapter 11

**THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS' RESPONSE  
TO DEBTOR'S OBJECTION TO  
OFFICIAL COMMITTEE OF  
UNSECURED CREDITOR'S PROPOSED  
FORM OF ORDER AUTHORIZING  
DISCLOSURE OF INDEPENDENT  
REVIEW BOARD MINUTES**

Date: March 13, 2025

Time: 1:30 p.m.

Place: Courtroom 17

450 Golden Gate Avenue, 16<sup>th</sup> Fl.

San Francisco, CA

Hon. Dennis Montali

22 **TO THE HONORABLE DENNIS MONTALI, THE DEBTOR, AND ALL OTHER**  
23 **PARTIES IN INTEREST:**

24 The Debtor's Objection<sup>1</sup> is an inappropriate attempt to seek reconsideration of the Court's  
25 decision and to seek relief the Debtor failed to request earlier.  
26

27 <sup>1</sup> *Debtor's Objection to the Official Committee of Unsecured Creditors' Proposed Form of Order*  
28 *Authorizing Disclosure of Independent Review Board Minutes*, ECF No. 1128 (the "Objection"). Any  
capitalized terms not otherwise defined have the meanings ascribed to such terms in the Objection.

1 First, the Debtor is not merely asking for the redaction of the names of the “lay people who  
2 voluntarily participate in the IRB process.” (Objection at 2:12-13). Instead, the Debtor is making  
3 this last-ditch effort to prevent the community from learning what the Archbishop, and other  
4 Archdiocesan officers and employees have said behind closed doors as part of the IRB in response  
5 to actual claims of child abuse. (Objection at 1:19-20).

6 Second, there is no ambiguity that the Committee’s agreement, cited in the Objection, that  
7 “personally identifying information ... can remain redacted” in the IRB Minutes was to the  
8 Debtor’s existing redactions of information related to survivors and perpetrators, not any persons  
9 identified in such minutes. As the Debtor’s quote indicates, the Committee agreed that  
10 information can “*remain* redacted.” The Committee did not agree, the Archdiocese did not  
11 previously request, and the Court did not order, additional redactions of the IRB Minutes. The  
12 Court confirmed that the IRB Minutes already contained sufficient redactions: “As to whether  
13 material in the Minutes is scandalous to any accused individual under Section 107, the Minutes are  
14 already anonymized (via initialization or nicknames) and redacted.”<sup>2</sup>

15 Further, the Committee was clear in what it was requesting from the Court. At the hearing,  
16 Committee counsel stated “I want to state on the record clearly as to the IRB minutes exactly what  
17 the committee is asking for. The Committee is asking for the documents filed as Exhibit B to have  
18 the confidentiality mark on those documents removed as they are. That is the sole request the  
19 committee is making as to Exhibit B.”<sup>3</sup> Counsel further clarified, “Your Honor, we would not be  
20 requesting to alter the minutes as they were given to the Committee at all.”<sup>4</sup>

21 By its Objection, the Debtor seeks new relief. The Objection does request the redactions of  
22 any names listed in the IRB Minutes. Nor was there a single instance in which Debtor’s counsel  
23 argued in favor of additional redactions to the IRB Minutes at the hearing. Nor was the  
24 “expectation of anonymity” of the IRB members raised at the hearing. The Debtor opposed the  
25 Committee’s request for non-confidentiality of the IRB Minutes in its entirety, without requesting

26 \_\_\_\_\_  
27 <sup>2</sup> Decision, ECF 1105, at 10:10-15.

28 <sup>3</sup> See Transcript of March 13, 2025 hearing, attached hereto as Exhibit 1 at 85:21–86:1.

<sup>4</sup> *Id.* at 87:10 -12.

1 redactions of board member names as an alternative form of relief.<sup>5</sup> If the Debtor had raised this  
2 issue earlier, the parties could have appropriately briefed and argued the issue of the Debtor's  
3 allegation that the IRB Members have "reasonable and good faith expectation of anonymity."  
4 Instead, the Debtor raises the issue (with no factual or legal support) in response to the form of  
5 order.

6  
7 Dated: April 7, 2025

PACHULSKI STANG ZIEHL & JONES LLP

8  
9 By /s/ Gail S. Greenwood

10 James I. Stang  
11 Andrew W. Caine  
12 Gail Greenwood  
13 Brittany M. Michael

14 Attorneys for the Official Committee of  
15 Unsecured Creditors  
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27 \_\_\_\_\_  
28 <sup>5</sup> Compare *id.* at 92:15-19 (arguments for opt-in process *if* the Court was inclined to grant motion with respect to Claims Data).

# EXHIBIT 1

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

-oOo-

In Re: ) Case No. 23-30564  
 ) Chapter 11  
THE ROMAN CATHOLIC ARCHBISHOP )  
OF SAN FRANCISCO ) San Francisco, California  
 ) Thursday, March 13, 2025  
Debtor. ) 1:30 PM

STATUS CONFERENCE

HEARING ON REQUEST TO ENGAGE  
REAL ESTATE PROFESSIONALS  
FILED BY CREDITORS' COMMITTEE

MOTION TO UNSEAL PORTIONS OF  
RECORD AND RELEASE CERTAIN  
MATTERS FILED BY CREDITORS'  
COMMITTEE

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE DENNIS MONTALI  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For The Roman Catholic  
Archbishop of San  
Francisco:

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For Office of the United  
States Trustee:

PHILLIP J. SHINE, ESQ.  
U.S. Department of Justice  
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Suite 05-0153  
San Francisco, CA 94102  
(408)535-5525

Also Present:

Abp. Salvatore Joseph Cordileone  
(Via Zoom)

Fr. Patrick Summerhays

1 Also Present (Cont'd): Paula Finigan Carney, Esq.

2 Melissa Bach (Via Zoom)

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18 Court Recorder: LORENA PARADA  
19 United States Bankruptcy Court  
20 450 Golden Gate Avenue  
San Francisco, CA 94102

21 Transcriber: RIVER WOLFE  
22 eScribers, LLC  
23 7227 N. 16th Street  
Suite #207  
Phoenix, AZ 85020  
(800) 257-0885

24 Proceedings recorded by electronic sound recording;  
25 transcript provided by transcription service.

## The Roman Catholic Archbishop of San Francisco

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1 SAN FRANCISCO, CALIFORNIA, THURSDAY, MARCH 13, 2025, 1:30 PM

2 -oOo-

3 (Call to order of the Court.)

4 THE CLERK: All rise. Court is now in session, the  
5 Honorable Dennis Montali presiding.

6 THE COURT: Good afternoon, everyone. Please be  
7 seated. Thank you.

8 THE CLERK: Calling the matter of the Roman Catholic  
9 Archbishop of San Francisco.

10 THE COURT: One second before we start. Before I take  
11 appearances, just for those of you not familiar with the  
12 process here and to make sure you're all clear on the agenda,  
13 there are three matters on the calendar this afternoon in this  
14 case. One is a hearing on a request by the committee to engage  
15 real estate professionals. Another is just a status conference  
16 that the Court has requested on the conduct of the case. And  
17 then the primary agenda item is the motion of the creditors  
18 committee to unseal portions of the record and to have the  
19 Court release certain matters that are described in the briefs.

20 I want to take them in that order. So I'd like to get  
21 appearances of counsel first who are going to appear on the  
22 request for employment of a real estate consultant to work with  
23 the creditors' committee and the opposition from the United  
24 States Trustee.

25 Appearances.



**The Roman Catholic Archbishop of San Francisco**

5

1 Mr. Pascuzzi, good afternoon.

2 MR. PASCUZZI: Good afternoon, Your Honor. Paul  
3 Pascuzzi for the Roman Catholic Archbishop of San Francisco.  
4 Your Honor, just for the record, on Zoom, the archbishop is --  
5 Cordileone is on Zoom. Present in court is Fr. Patrick  
6 Summerhays and general counsel Paula Carney.

7 I'll be dealing with the Cushman & Wakefield  
8 application and the status conference. The other counsel here  
9 also in addition, Paul Gaspari from Weintraub Tobin, Barry  
10 Weinstein from Blank Rome, special insurance counsel, and then  
11 Ori Katz and Amanda Cottrell from Sheppard Mullen who will  
12 be -- Amanda Cottrell will be handling the other committee  
13 motion.

14 THE COURT: Okay. Thank you.

15 Other counsel.

16 MS. GREENWOOD: Good afternoon, Your Honor. Gail  
17 Greenwood of Pachulski Stang Ziehl & Jones appearing for the  
18 committee of unsecured creditors. And I'm here with my  
19 colleague Brittany Michael. She'll be arguing other matters.  
20 But I'll be arguing the employment application. And we have on  
21 Zoom Melissa Bach of Cushman & Wakefield, and she's available  
22 if the Court has questions for her. And I'll leave it at that.

23 THE COURT: Okay. Thank you.

24 MR. SHINE: And good afternoon, Your Honor. Phillip  
25 Shine, appearing on behalf of the United States Trustee.

1           THE COURT: Again, For those of you that have been  
2 following or participating on any Zoom hearings, because the  
3 debtor's counsel requested that this be a live in-court  
4 hearing, I made the decision to obviously accede to that  
5 request but not to them to try to make it into what we call a  
6 hybrid, where arguments of counsel would also be presented by  
7 Zoom. For technical reasons and other reasons, that just isn't  
8 feasible.

9           But again, consistent with the court being available,  
10 that's why the proceedings are available for anyone who wishes  
11 to observe them from remote locations. But unlike hearings  
12 where there is some interaction with people attending remotely,  
13 I don't intend to take any commentary from anyone except  
14 counsel or anyone else requesting and authorized to be heard in  
15 court. But nothing is anticipated at the moment. So the  
16 suggestion that someone might be available to comment or to  
17 respond remotely, I'll deal with that if and when it becomes  
18 necessary.

19           So let's go to the question of the -- well, the  
20 committee has asked to employ Cushman & Wakefield as a real  
21 estate expert. The U.S. Trustee, Mr. Shine has opposed. So  
22 let me hear if you've changed your mind or you still want to  
23 adhere to that because there's no other opposition and  
24 certainly no opposition specifically by the debtor.

25           MR. SHINE: Yes, Your Honor. The U.S. Trustee opposes

1 employment of this professional because they don't appear to be  
2 disinterested. There appears to be an actual --

3 THE COURT: Is there a requirement of  
4 disinterestedness in Section 1103?

5 MR. SHINE: Well, Your Honor, I think generally  
6 professionals --

7 THE COURT: Wait. Is that a -- I don't want to make  
8 this a cross-examination, but the question lends itself to a  
9 yes or no answer first.

10 MR. SHINE: Your Honor, off the top of --

11 THE COURT: Disinterestedness is not a required  
12 element of an 1103 application, is it?

13 MR. SHINE: Your Honor, I do not know off the top of  
14 my head.

15 THE COURT: Would you like to borrow my Bankruptcy  
16 Code?

17 MR. SHINE: Yes, Your Honor. May I approach?

18 THE COURT: You don't really want to, do you? I  
19 wouldn't have asked you the question if I didn't know the  
20 answer. It's not. This is not a -- this is not a 327  
21 employment under 327(a). You make the argument that there's a  
22 conflict. Well, what's the conflict?

23 MR. SHINE: Your Honor, the potential conflict is that  
24 there's dual representation, and they're on both sides of  
25 competing interests.

1 THE COURT: Why is that a conflict?

2 MR. SHINE: There could be competing interests, Your  
3 Honor.

4 THE COURT: Give me an example. Cushman is a leasing  
5 agent for the diocese for some leased facility, right?

6 MR. SHINE: That's correct, Your Honor.

7 THE COURT: The committee wants Cushman's advice about  
8 values of properties. Where's the conflict?

9 MR. SHINE: Your Honor, I think that, just generally  
10 speaking, dual representation can create a conflict. I can't  
11 off the top of my head think of a specific example in this  
12 instance.

13 THE COURT: Well, I find that -- I find that one of  
14 these sort of knee jerk reactions, but I'm groping for a  
15 conflict. But even if there is one, therefore what? What is  
16 the disqualifier? In other words, I questioned you about 327,  
17 but if a debtor asked to employ a specialist to do something  
18 like evaluation but wanted to hire someone who was also doing  
19 something else for someone in controversy -- or who has a  
20 different position, does that mean the professional has a has a  
21 conflict?

22 MR. SHINE: It might.

23 THE COURT: Is there any privilege that might exist  
24 between Cushman on the one hand, and the committee on the  
25 other --

1 MR. SHINE: Your Honor, I --

2 THE COURT: -- or Cushman and the debtor? Is there a  
3 privilege?

4 MR. SHINE: Your Honor, I don't think that there's any  
5 issue of a privilege here.

6 THE COURT: Well, look, the reason I'm questioning  
7 this is because I want you and the United States Trustee to  
8 tell me when you think something's inappropriate, but I'm  
9 searching for the inappropriateness of it. I mean, I'm not  
10 trying to make it any worse for you. If you have anything --  
11 you want to add anything further?

12 MR. SHINE: Your Honor, I don't have anything to add.

13 THE COURT: All right. Mr. Pascuzzi, I need to  
14 hear -- I mean, I'm sorry.

15 Ms. Greenwood, the debtor seems to agree that Cushman  
16 can do both things --

17 Oh, no. I'll ask Ms. Greenwood.

18 But the debtor wants access to the work product, and I  
19 haven't heard from the committee on that. What's your position  
20 on that?

21 MS. GREENWOOD: Yes, Your Honor. I think the debtor  
22 has used this as an opportunity to ask for both the cap on the  
23 fees and disclosure of all of Cushman's reports and --

24 THE COURT: The debtor's agreed?

25 MS. GREENWOOD: Well, the debtor originally six weeks

1 ago -- no, I'm sorry. The committee stands by its offer of a  
2 stipulation that was proposed six weeks ago, by which the  
3 debtor would provide Cushman with access and information to the  
4 properties and direct that its parishes, schools, and  
5 cemeteries do the same. And in exchange, the committee would  
6 provide all of Cushman's reports and all of the documents that  
7 Cushman relies upon.

8 The debtor declined that stipulation. And as a  
9 result, we're looking at employing Cushman as our real estate  
10 valuation expert. And absent a stipulation and a two-way  
11 street in terms of providing access and information, we have  
12 declined to provide those reports right now, and we're not  
13 under an obligation to provide our expert reports. At some  
14 point, they may be.

15 THE COURT: But you agree there's no privilege, is  
16 there? In other words, if Cushman says, we've examined this  
17 facility and Blackacre and we believe it's worth a million  
18 dollars, is there any privilege? Is there any --

19 MS. GREENWOOD: It would come under an expert work  
20 product.

21 THE COURT: But would it be discoverable?

22 MS. GREENWOOD: If we intend to use those expert  
23 reports at trial, yes.

24 THE COURT: Well, I got news for you. If they come in  
25 with a wrong number, you're not going to use them at trial.

1 But that's not the point.

2 MS. GREENWOOD: That's not the point. Cushman is  
3 coming in not as an interested party. She's collecting data  
4 and providing the reports as to the valuation of these real  
5 properties. The entire scope of that project is in flux  
6 because it's going to depend upon how far things go in  
7 mediation. Right now, the initial set of properties is set to  
8 be between twenty to thirty properties. And we'd like to  
9 employ Cushman & Wakefield for that purpose.

10 THE COURT: So Mr. Pascuzzi, what's the problem  
11 with -- the diocese has to pay for this to begin with, so a cap  
12 doesn't seem unreasonable. But why not just exchange and be  
13 willing to let the information be available as the committee's  
14 requested?

15 MR. PASCUZZI: Your Honor, there was more to that  
16 stipulation. We had offered to have this be kind of a joint  
17 project, where we engage one professional who would be pretty  
18 much independently evaluating real property that we both could  
19 use. It would be useful to both sides. That was rejected.

20 And so then we get to the point where we are now,  
21 where they just filed their application. We said we just want  
22 to see the valuations because we're paying for them. They're  
23 supposed to be independent. And so why shouldn't we get access  
24 to that data and that information as well?

25 It's being practical. It's being efficient. It's

1 being collaborative. And that's the way we should be working.

2 THE COURT: And it doesn't close -- it doesn't close  
3 the door to be adverse on some issue in the future, right?

4 MR. PASCUZZI: I don't see why it would.

5 THE COURT: So use my example. Cushman comes back and  
6 says Blackacre's worth a million. And the committee says,  
7 fine, that's what they believe. And you believe it's worth --  
8 if you want two million, half a million, I don't care. Pick a  
9 higher or low number. Then what? Is it work product? Are you  
10 allowed to see the -- well, under a stipulation, you're allowed  
11 to look at the document. What about if there is no such  
12 stipulation?

13 MR. PASCUZZI: I'm sorry.

14 THE COURT: Well, I mean, if there's an agreement,  
15 obviously, we don't have to worry about it.

16 MR. PASCUZZI: Yeah.

17 THE COURT: But if I were to say there's no agreement.  
18 I'm just allowing them to employ Cushman as their advisor. Do  
19 you believe it would still be subject to a some sort of  
20 privilege, litigation privilege?

21 MR. PASCUZZI: Your Honor, their final reports and the  
22 data they use to compile those reports, they would allow us to  
23 be able to evaluate them. And if we felt necessary, we'd go  
24 hire somebody to be able to give an opinion on them.

25 THE COURT: So do you --



1 MR. PASCUZZI: We're not getting ready for trial, Your  
2 Honor. We're trying --

3 THE COURT: Right. We're not getting ready for trial.

4 MR. PASCUZZI: -- to gather information.

5 THE COURT: I mean, look, independently of that, if I  
6 decided to authorize Cushman to act as a advisor to the Court  
7 to determine the values of these twenty properties, there'd be  
8 no privilege. It would just be, they would say, we believe  
9 it's this value. And so as I say, in my own experience, if the  
10 appraiser gives you the wrong number, you get a new appraiser.  
11 But here, what would happen here if --

12 MR. PASCUZZI: I mean, if we were going to trial over  
13 some valuation issue, that might be a relevant question. But  
14 we're gathering information to go to mediation and try and  
15 reach a global settlement, which is what our goal is and our  
16 primary concern and being efficient, Your Honor, so that we  
17 don't have to go hire a real estate appraiser as well. We  
18 might have to but --

19 THE COURT: You might have to. You might have to. It  
20 would be ironic, wouldn't it, if Cushman comes in too high on  
21 one project, but too low on another one.

22 MR. PASCUZZI: And Your Honor, on the fees thing, at  
23 the beginning of this discussion with the committee, we asked  
24 them, well, how much are you going to going to spend? And they  
25 gave us an estimate of 100,000 dollars for an initial review of

1 twenty to thirty properties. And we just said, great, why  
2 don't we just start with that? If you're going to go above  
3 that, a simple application saying, look, we need to go above  
4 that for these reasons, it's not a big deal.

5 THE COURT: Yeah. Mr. Greenwood, the problem that I'm  
6 having with the committee's position -- first of all, let me  
7 rephrase this. I think it's perfectly reasonable for the  
8 committee to ask to get some information on the value. And  
9 when somebody else is paying, it's easy. And the debtor says,  
10 I'm willing to pay 100,000 dollars, at least for openers.

11 It strikes me that it's too premature to start getting  
12 into a debate about litigation privilege and work product and  
13 so on, but rather to say to Cushman & Wakefield, go, value  
14 these properties and tell the debtor and the committee what you  
15 come up with. And if and when it becomes a litigation  
16 privilege, then we described and figure out what to do.

17 And I'd rather say -- this almost goes back to my  
18 discussion with Mr. Shine. There's no conflict. If a  
19 reputable company, which Cushman & Wakefield certainly is, says  
20 we have the skills and the knowledge to determine a reasonable  
21 value for these properties. And here is what we'll -- here's  
22 our opinion. That, to me, is progress. And we don't have to  
23 turn it into something that it isn't.

24 MS. GREENWOOD: Your Honor, we have no interest in  
25 turning this into a major dispute. And we would like to walk

1 down the cooperative path. And with that said, it's struck us  
2 as very uncooperative in terms of the archdiocese refusing to  
3 provide access and information to our valuation expert. We're  
4 happy to share these reports. But if we can't get the access  
5 and information coming from the archdiocese, why should we be  
6 providing the additional reports that are being prepared on --

7 THE COURT: Be a little more specific, if you would,  
8 about the access. What does Cushman need that the diocese has  
9 that it isn't willing to share at the moment?

10 MS. GREENWOOD: Here's the contact person that you  
11 should talk to in terms of getting into this school and  
12 measuring whatever, and we --

13 THE COURT: But that's done in every appraisal ever.  
14 When you hire somebody to come out and appraise your house that  
15 you're renting to somebody, you say to the tenant, by the way,  
16 the appraiser is going to come out and check the house. What's  
17 different about this? I mean, the committee and its experts  
18 aren't asking the diocese to go dig in and come up with some  
19 history, is it? It's a question of --

20 MS. GREENWOOD: If they have that available, we'd like  
21 it. But nobody has put out any kind of discovery requests or  
22 major -- it's meant to be cooperative in terms of you invite  
23 them onto the onto the property. You cooperate and provide  
24 them with, by the way, here, we've got some toxic soils that  
25 you should probably keep into -- but it's meant to make the

1 expert's valuation of the real estate that much more --

2 THE COURT: Well, I can assure you, if someone like  
3 Cushman & Wakefield says, we think this is great property, but  
4 we can't determine its value because we think there's some  
5 hazardous waste product but no one will tell us where it is,  
6 I'd say, fine. That's not a very good appraisal.

7 Mr. Pascuzzi, this is a nonissue, isn't it, today?

8 MR. PASCUZZI: It's a nonissue, Your Honor.

9 THE COURT: Okay. I'm going to overrule the U.S.  
10 Trustee's objection because I don't believe that there is  
11 anything in the Bankruptcy Code that prohibits a committee to  
12 hire a professional who happens to be using that  
13 professional -- I'm sorry, where that professional is providing  
14 some service, albeit within the broad category of real estate  
15 services, but specifically to advise on leasing of a particular  
16 location at the same time to do both chores.

17 If I want to be technical about it, as I told Mr.  
18 Shine, the statute the committee relies on, for starters,  
19 doesn't require this disinterested concept, which is a  
20 bankruptcy term that the bankruptcy lawyers are familiar with.  
21 And it does preclude employment of professionals like Cushman,  
22 where they represent an adverse interest. But this, to me, is  
23 not adverse.

24 If Cushman says, oh, by the way, we would like to  
25 represent the tenant who's leasing the property from the

1 diocese, then I'd suggest that they're representing two sides  
2 of a position, at least lessor/lessee, which is inherently  
3 potential for conflict. But on this record and on this  
4 proposal, there is none.

5 So the committee will be authorized to employ Cushman  
6 & Wakefield to provide the services that Ms. Greenwood  
7 summarized in the papers, say, with the information being  
8 available that with the debtor and the committee through  
9 Cushman cooperating on things like access or records that are  
10 relevant to what Cushman is trying to do, such as a value. So  
11 for example, if last year, the diocese commissioned an  
12 appraisal of Blackacre, then they should make that appraisal  
13 available to Cushman this year or so on and so forth.

14 And I'll make it subject to a 100,000-dollar cap. And  
15 if Cushman needs to or the committee for Cushman's benefit  
16 believes there should be an increase in that amount, I'll  
17 Direct that the representatives take it up with the debtor  
18 first. And if the debtor agrees, I'll approve it without  
19 debate. If there's a dispute and Cushman wants an excessive  
20 amount of money that the debtor is unwilling to commit to, I'll  
21 decide it. But again, this, I think, falls into the category  
22 of problems -- I mean, solutions looking for a problem. And  
23 I'm not going to worry about at this point.

24 So Ms. Greenwood. Mr. Pascuzzi. Are you satisfied  
25 with where we come out on this?

1 MS. GREENWOOD: Yes, Your Honor.

2 MR. PASCUZZI: Yes, Your Honor.

3 THE COURT: Okay. Then the two of you, please agree  
4 on an order that that's acceptable to Cushman. And let Mr.  
5 Shine have access to it. And again, I don't want to make a big  
6 deal of my disagreement with the U.S. Trustee, and I'll leave  
7 it at that if they want to visit some other way. Okay. That's  
8 easy.

9 Mr. Pascuzzi, you were good enough to respond to my  
10 request and file the debtor's status conference statement.

11 Ms. Greenwood, are you going to address to that, did  
12 you say?

13 MS. GREENWOOD: That will be Ms. Michael.

14 THE COURT: Ms. Michael on the status report?

15 MS. GREENWOOD: Yes, Your Honor.

16 THE COURT: Okay. Ms. Michael. Just, again, you can  
17 stay seated if you want, just stay near the microphone. And  
18 let me -- before you respond, let me say that the status was  
19 sufficient for me to get a snapshot. And I have no intention  
20 of interrogating, questioning, talking, or having any  
21 communications with mediators from either the mediators in this  
22 case or mediators or judges presiding over other dioceses  
23 bankruptcies.

24 So do you want to add anything further, Ms. Michael?

25 MS. MICHAEL: Yes, Your Honor. Brittany Michael,

1 Pachulski Stang Ziehl & Jones, on behalf of the committee.

2 May not shock Your Honor that the committee has a very  
3 different view of the status than the status report filed by  
4 the debtor here. The committee sees this case at a stage where  
5 we need to start receiving rulings on certain issues that are  
6 obstacles to getting to a consensual resolution.

7 THE COURT: I haven't withheld any rulings yet, have  
8 I?

9 MS. MICHAEL: No, not yet.

10 THE COURT: Okay.

11 MS. MICHAEL: The status report --

12 THE COURT: I don't think so.

13 MS. MICHAEL: Yes.

14 THE COURT: I want to make sure that I not land the  
15 trip on me for some matters that are waiting for a decision on.

16 MS. MICHAEL: No, not at all. The committee views  
17 that, as you are starting to see with the matters before you  
18 today and the matters that will be before you two weeks from  
19 now as well as a few more that I will describe here, that we're  
20 now at a stage where we intend to continue with mediation, but  
21 that the mediation efforts would be aided by starting to bring  
22 some issues before this Court and before the state court.

23 The archdiocese, in its filed update --

24 THE COURT: How can you bring something before the  
25 state court if there's a stay in effect?

1 MS. MICHAEL: That is the subject that we will be in  
2 front of you --

3 THE COURT: Oh, okay.

4 MS. MICHAEL: -- on in two weeks. Yeah.

5 THE COURT: Oh, yes, I'm aware that that's coming.

6 MS. MICHAEL: Yeah.

7 THE COURT: But I thought maybe --

8 MS. MICHAEL: No.

9 THE COURT: -- you were jumping the gun on that.

10 MS. MICHAEL: No. In the archdiocese filed update on  
11 paragraph 3, the archdiocese noted that confirmed plans in  
12 diocesan cases have all been consensual plans. What it fails  
13 to note is that few of those consensual plans occurred without  
14 litigation in bankruptcy and/or state court. In most  
15 instances, mediation continued concurrent with that litigation.  
16 The two are not mutually exclusive. While it's hard to respond  
17 to the archdiocese description of the mediation without  
18 violating the violating the privilege --

19 THE COURT: No, I don't want you to do that.

20 MS. MICHAEL: Yeah. It's worth noting that the  
21 committee is concerned that the mediation is being described in  
22 paragraph 9 as in the beginning stages, over seven months into  
23 mediation.

24 The issues the committee specifically has or intends  
25 to seek rulings on include the need for cases to go to judgment



1 in state court. That's the matter before you two weeks from  
2 today. We need the cases to go forward to judgment in state  
3 court in order to give guidance to all the parties, including  
4 the insurers, on both liability and damages issues. The  
5 cases --

6 THE COURT: But isn't what mediation is supposed to  
7 avoid?

8 MS. MICHAEL: Mediation is supposed to help us get to  
9 a consensual plan. Sometimes, in order for us to get to a  
10 consensual plan, we need guidance on the issues that the  
11 parties most disagree on.

12 THE COURT: Okay. Again, don't turn this into the  
13 argument for two weeks on the --

14 MS. MICHAEL: Sure. The archdiocese described that  
15 motion as test cases. We want to be clear that those cases are  
16 not tests of anything. Those are the two cases that the state  
17 court had previously identified as set to move forward first,  
18 and they are the trial-ready cases.

19 THE COURT: Well, but I didn't interpret the word  
20 "test" to be like a practice test. To me, it's a real -- it's  
21 the real thing for those claimants.

22 MS. MICHAEL: Yes, absolutely.

23 THE COURT: And so I mean, you didn't expect -- I mean  
24 isn't that what it means? I mean, you've heard the term  
25 "bellwether". This could be a bellwether case too, right? I

1 mean, it happens in lots of mass tort cases. Drugs. Birth  
2 control devices. Earplugs. Chemicals. Lots of things, right?

3 MS. MICHAEL: Absolutely. Yes, Your Honor.

4 THE COURT: Okay. All right.

5 MS. MICHAEL: We also disagree with the archdiocese  
6 regarding its relationship between the archdiocese and the  
7 parishes and other divisions of the debtor. In looking forward  
8 to the next few months, we anticipate filing an adversary  
9 proceeding, seeking the Court's guidance on those issues as  
10 well.

11 The archdiocese also references what is happening  
12 right now in state court, in the JCCP. The archdiocese has  
13 told Judge Chatterjee, similar to what they told the state  
14 court judge in the Cruz case that was before you a few weeks  
15 ago that the stay applies to all codefendants in that case.

16 THE COURT: Well, we got that straightened out, don't  
17 we?

18 MS. MICHAEL: I believe it was straightened out as to  
19 the Cruz litigation. I don't know that that has been  
20 straightened out as to what is before Judge Chatterjee in the  
21 JCCP.

22 THE COURT: Well, why doesn't somebody educate that  
23 judge?

24 MS. MICHAEL: I understand that there's another status  
25 conference coming up in a few weeks. I would defer to some of

1 my state court colleagues who are in the court today. As  
2 bankruptcy counsel, we are not in front of Judge Chatterjee in  
3 those proceedings.

4 THE COURT: Well, and I don't want those counsels --

5 MS. MICHAEL: Sure.

6 THE COURT: -- to usurp your role. But my job here is  
7 to give signals to state court judges where they do not have a  
8 stay to worry about, and I don't want that confusion to persist  
9 at all. So in any of the diocese cases, or at least here in  
10 Northern California, are there similar mis-signals being sent  
11 to state court judges?

12 MS. MICHAEL: My understanding of the status of the  
13 proceedings in front of the Judge Chatterjee and the JCCP,  
14 which is for all of the Northern California clergy cases, is  
15 that the archdiocese filed a statement similar to what you  
16 heard in the Cruz case that cited to the Fogerty case in the  
17 Second Circuit and to a District of Oregon case that applied  
18 Fogerty in similar circumstances dealing with mortgages and  
19 that the archdiocese's position that has been filed in the JCCP  
20 is that the automatic stay applies to all codefendants.

21 THE COURT: The judge that you've named, Chatterjee,  
22 is that the judge who has replaced former --

23 MS. MICHAEL: Judge Wise.

24 THE COURT: -- superior court Judge Wise?

25 MS. MICHAEL: Yes, Your Honor.

1 THE COURT: Who's now on the district court? Okay.

2 MS. MICHAEL: Yes.

3 THE COURT: And so it's Oakland Superior?

4 MS. MICHAEL: Yes.

5 THE COURT: Okay. Well, procedurally -- I'm just  
6 thinking out loud then.

7 MS. MICHAEL: Sure.

8 THE COURT: But you're standing here telling me that  
9 you believe that there is an ongoing misstatement of the law to  
10 a superior court judge, and yet nobody's asked me, except your  
11 briefs, you the preview here, to do anything about it. I mean,  
12 I did it in an existing case --

13 MS. MICHAEL: Um-hum.

14 THE COURT: -- and Mr. Pascuzzi differed with me about  
15 some law. But I mean, how do you want to tee -- to me, we  
16 should tee this up soon. But I mean, for those counsel and the  
17 parties before those judges who aren't subject to the stay to  
18 act and advise accordingly, I mean, it's one of these circular.  
19 How can you go before the judge and say there's a stay that  
20 operates here, except that for those folks over there that  
21 think there's a stay?

22 MS. MICHAEL: Yes, Your Honor. I believe that we have  
23 also been caught up in some of that circle as well. But I  
24 would say that it's my understanding that the plaintiff's  
25 liaison counsel have been filing sort of counter-statements in

1 terms of their understanding of the law and that at the moment,  
2 Judge Chatterjee has asked the parties to determine a process  
3 to put in front of him the question of whether the stay applies  
4 to codefendants in those actions but has also noted his  
5 understanding that any ruling from a bankruptcy court would  
6 take precedence over any determination he makes about --

7 THE COURT: All lawyers, whether they're state court  
8 lawyers or bankruptcy judges know what the Schwartz case says  
9 of the Ninth Circuit. It says state court judges can interpret  
10 the automatic stay, as long as they interpret it correctly.  
11 But if they interpret it incorrectly, then the bankruptcy court  
12 has the ultimate call on this, which is another way of saying  
13 if a state court lawyer goes and thinks he or she is immune  
14 from contempt because a state court judge says the stay doesn't  
15 apply, they might be back here as a respondent on a contempt  
16 motion.

17 MS. MICHAEL: Yes, Your Honor.

18 THE COURT: Okay. All right. Again, you need to tee  
19 this up so I --

20 MS. MICHAEL: Yes.

21 THE COURT: -- have something I can act on other than  
22 one of my advisory opinions.

23 MS. MICHAEL: Understood, Your Honor.

24 THE COURT: Okay.

25 MS. MICHAEL: And that is why we see this as another

1 issue that we will be seeking -- or that a party in this case  
2 will be seeking guidance from you on.

3           Additionally, in paragraph 11 of the status report,  
4 the archdiocese incorrectly states that defense costs in those  
5 codefendants actions impact the allegedly shared insurance.  
6 While when this issue is teed up, obviously evidence will have  
7 to be put in front of Your Honor regarding what the insurance  
8 policies do or do not say. But we did want to clarify that  
9 from our perspective, that is an incorrect statement of the  
10 facts.

11           THE COURT: Just show me which -- this is in paragraph  
12 11? What line?

13           MS. MICHAEL: It's paragraph 11, which is page 6. And  
14 then it is line 23.

15           THE COURT: Okay. I got it. Thank you. Thank you.

16           MS. MICHAEL: And then finally, the committee does not  
17 share the same view of how discovery has proceeded as the  
18 debtor does. In our experience, when dioceses cooperatively  
19 hand over the information at the committee's request,  
20 discovery-related fees do not have to represent the majority of  
21 the fees in a case.

22           Further, quantity does not result in quality. It is  
23 again, often in cases when dioceses have been the least  
24 cooperative regarding discovery, that we see statements  
25 regarding the sheer quantity of discovery, rather than the

1    responsiveness of the discovery. We are still working with the  
2    archdiocese and some of its affiliates to narrow issues, but we  
3    also expect that we will be back in front of Your Honor  
4    regarding discovery issues in the next thirty to sixty days.

5           THE COURT: Okay. Thank you, Ms. Michael.

6           MS. MICHAEL: Yes. Thank you, Your Honor.

7           THE COURT: Mr. Pascuzzi, I don't need any response.  
8    I'm not going to act. I mean, you're welcome to make a brief  
9    response if you want. But I asked for a status report, and I  
10   got one. And I'm not going to say anything other than thank  
11   you. But if you want to add something further.

12          MR. PASCUZZI: Your Honor, you'll hear more about all  
13   of this. That was the point of the status conference  
14   statement, to alert you to what's going on. I think we have  
15   two fundamentally different views of how the case should  
16   proceed. We want to go to mediation. Find a resolution as  
17   soon as possible. As you heard, the committee has a long list  
18   of litigation that it wants to pursue instead.

19          So we'll get there. We'll keep trying to work  
20   together. We'll keep trying to work it work it out. I'm  
21   trying to find solutions. But I just wanted to give you the  
22   (indiscernible).

23          THE COURT: Just state the obvious to you, to your  
24   client, to most of all the survivors that would like to see  
25   some resolution here, is that I've been on this case for a year

1 and a half, and there hasn't been too much for me to do, which  
2 in my experience is a good thing, from a judge's point of view.  
3 And I've had successes both in my prior life as a lawyer and  
4 more recently as a judge that some of the best results happen  
5 when the judge is not involved. And I remember as a young  
6 lawyer being criticized by a judge because nothing was  
7 happening in front of the judge. And I remember explaining to  
8 the judge, that's because we're making progress.

9 And so I do not personally worry that at the eighteen-  
10 month mark, we don't have a plan on the table yet. That being  
11 said, I do worry about the staggering amount of money being  
12 paid out and the fact that this is not going to be like some of  
13 the cases in other parts of the country that are at the five-  
14 year mark.

15 And I simply am not -- and I will also say, and this  
16 is not irrelevant to what we have to deal with in the next  
17 motion today, I am not going to sit idly by if we have victims  
18 and survivors of a case here not being on the same track and  
19 treatment as the same survivors who might have been the victims  
20 of some abuse that happened in the East Bay or in Sonoma  
21 County. And I can't solve the problems in Milwaukee or New  
22 Orleans or Buffalo, New York.

23 But in the immediate area of Northern California, in,  
24 I might say, an area when I was a young person in Catholic  
25 grammar school, there was only one diocese, and it was one.



1 There wasn't a separate diocese in Oakland, and I don't think  
2 there was one in San Jose and of course, Santa Rosa. And so I  
3 find it troublesome to me that there's even a risk that people  
4 who survived these tragedies might be treated differently or  
5 disparately because one lived in San Francisco, the other lived  
6 in Oakland or Vallejo -- or not Vallejo, a different district.

7 So I just keep that in mind. And so I don't intend to  
8 just sit and wait for five years. I intend something to  
9 happen. But I'm not jumping the gun either and putting  
10 deadlines. And I accept that the committee and the debtor have  
11 agreed for at least the short-term a so-called standstill on  
12 the exclusivity issue. And I'll deal with these motions that  
13 Ms. Michael summarized, as you predicted, as they show up.

14 So as far as I'm concerned, that's the status report  
15 today.

16 MR. PASCUZZI: Your Honor, there was one other thing.  
17 Would it make sense to have another status conference on  
18 calendar a few months down the road?

19 THE COURT: Well, I think you suggested that, yes.  
20 But it might not be necessary if I've got a bunch of motions  
21 coming up. I mean, why don't we do this? Why don't we -- let  
22 me hear the arguments we -- I'm sure a number of people that  
23 are waiting for what I'll call the main event for today, and I  
24 want to hear those arguments.

25 And at the conclusion of the hearing, I told you that

1 my expectation is to take the matters under advisement. I'm  
2 not a hundred percent sure it's going to be that way. But  
3 before we all leave the courtroom today, I will either have  
4 announced a decision or announced that I'm not going to yet  
5 make a decision, and I will also set a date for a status  
6 conference. But if the committee has a whole laundry list of  
7 motions coming up, we're not going to duplicate the effort.  
8 Okay.

9 MR. PASCUZZI: Thank you, Your Honor.

10 THE COURT: All right. All right. So thank you, both  
11 counsel, for the status report.

12 On the motions, I'm going to let the committee take  
13 the lead on the argument. But again, I've studied the  
14 extensively and more than once. And I don't need to have the  
15 wheel reinvented. I need to focus on things that are on my  
16 mind.

17 So Ms. Michael, is it you making the argument again?

18 MS. MICHAEL: Yes, Your Honor.

19 THE COURT: Okay. You're going to reserve some time?

20 MS. MICHAEL: Yes, Your Honor. And --

21 THE COURT: How much?

22 MS. MICHAEL: -- before we move to the main event, as  
23 you described it, I would be remiss if I was asked to clarify  
24 next our next hearing, which is two weeks from today, if the  
25 Court intends for that to be a Zoom hearing or back in the

1 courtroom?

2 THE COURT: Well, no one asked me to do anything.  
3 Again, I don't mind accommodating people, but I want to make  
4 sure they are accommodated. It is not easy. We can do it, but  
5 it's more of a problem to do the hybrid. I know that Judge  
6 Lafferty in Oakland is doing it and maybe judges elsewhere do  
7 it. It's not that I can't do it. It's just that -- and it was  
8 the debtor, not the committee, that asked. Do you have a  
9 preference for --

10 MS. MICHAEL: Your Honor, we do not have a preference.

11 THE COURT: Okay. Well, then, for now, I'm planning  
12 to just do it on Zoom just because --

13 MS. MICHAEL: Okay.

14 THE COURT: -- again, it's more convenient for  
15 everyone.

16 MS. MICHAEL: Thank you, Your Honor.

17 THE COURT: Okay. So how much time do you want to  
18 reserve?

19 MS. MICHAEL: Your Honor, I plan to keep my initial  
20 statements brief, so I reserve fifteen minutes.

21 THE COURT: You want to reserve fifteen?

22 MS. MICHAEL: Yes, Your Honor.

23 THE COURT: Well, maybe you won't be as brief because  
24 one of the things that you need to focus on -- I'm going to let  
25 you make the argument as you wish. And I promise to listen

1 carefully. But I'm concerned about the following.

2 I'm concerned about -- if I recall correctly, you've  
3 got 530 or 540 or whatever different claimants who are impacted  
4 by this. They are the claimants whose information is distilled  
5 into what I'll call exhibit A. And I'm not going into the  
6 merits of it on the public record at this point. But I'm a  
7 hundred percent -- I need you to persuade me that there is no  
8 single one of them out there that won't be shocked and offended  
9 and maybe hurt and troubled by making exhibit A public. I'm  
10 going to leave the minutes in what I'll call exhibit B.

11 Again, for those of you who are not lawyers or who are  
12 familiar with this case, but not in the technical way, to me,  
13 exhibit A is the distillation of information that the committee  
14 has assembled from the 500-and-some-odd proofs of claim that  
15 are on file. And exhibit B is what the committee has referred  
16 to as the minutes of the diocese review board.

17 And my concern here is a survivor who is a statistic  
18 on exhibit A but in reality is not a -- is not a statistic.  
19 It's a survivor of a tragedy. Might have been misled by the  
20 promises in the confidential statement and the supplement and  
21 all the other information that he or she looked at and the  
22 Court approval of what was extracted from them to complete  
23 their proof of claim. And I'll make a -- I'll make a  
24 hypothetical.

25 Exhibit A tells us a number of perpetrators and a

1 number of victims and a laundry list of types of conduct but in  
2 many instances, one victim in one location. And I understand  
3 that the data shows that a number of perpetrators were in a  
4 smaller -- not a tiny number, but a small number of locations.

5 But let's focus on that one victim in who was the only  
6 victim, at least with a proof of claim on file, from that one  
7 church or that one school. How do I know that that person  
8 isn't disappointed, if not worse, hurt, by exhibit A becoming  
9 public? I'll agree with you that on the face of it, there's no  
10 names of people. There are names of perpetrators, but not of  
11 survivors. And if this person is the survivor who is the one  
12 who went to school at that one place where there's one event,  
13 that person doesn't need to be told what he or she went  
14 through. Same with that person's family. Friends. Advisors.  
15 Lawyers. Et cetera.

16 But is that consistent -- is it consistent with the  
17 promise of confidentiality to turn that into a statistic that  
18 one could almost figure out what might be the case? And so if  
19 I am a -- if I am a person that lived in that neighborhood, do  
20 I now presume that someone might have been the victim who is  
21 the identity and the person? So with that broad -- it's a  
22 broad way of framing the question. And I want you also to tell  
23 me why I shouldn't, at the minimum, say that there needs to be  
24 more of an opportunity for all those 500-and-some-odd people to  
25 affirmatively, either affirmatively ask that their situation be

1 excluded, or at the minimum, or give them an opportunity so  
2 that on a non -- if they say nothing, it could be released.

3 So with that, you understand the way I'm framing the  
4 question?

5 MS. MICHAEL: Yes, Your Honor.

6 THE COURT: Okay. And you're free to -- you're free  
7 to respond as fully as you choose to and also to make the  
8 balance of your argument as you wish. So I'm going to listen  
9 to you now.

10 MS. MICHAEL: Okay. All right. Thank you, Your  
11 Honor. I intend to answer your question, but I do want to  
12 start by acknowledging and thanking the committee members and  
13 all of the other survivors who are in the courtroom today.  
14 This issue's incredibly important to the survivor community,  
15 and that is why these individuals have taken time off of work  
16 in order to be here today. I also understand that there are a  
17 number of survivors and committee members on the Zoom who were  
18 not able to be in the courtroom today, but by my count, there  
19 is over half of the committee who is present in the courtroom  
20 today.

21 And I want to thank Your Honor both for opening the  
22 Court to them and for the accommodations the Court continues to  
23 make to support survivors experiencing these hearings, but also  
24 for having that Zoom available so that those who could not be  
25 here could still hear the hearing.

1 THE COURT: Okay.

2 MS. MICHAEL: Your Honor, as you said, you've read the  
3 briefing. You understand our argument. So I'm going to go  
4 straight to addressing your question.

5 I understand your concern, and I'm grateful that you  
6 are thinking of the survivor experience in that way. I do want  
7 to address first the idea that in a situation, we'll use a  
8 school, that there's one individual who alleges abuse that  
9 occurred at a certain school, that somehow that could be traced  
10 back to that individual, that is part of why we compiled the  
11 data in the way that we did. We didn't include any dates. We  
12 didn't say abuse occurred at school X in the 1970s.

13 THE COURT: No, but again, I don't pretend to be a  
14 statistician or a wizard at breaking codes, but one can easily  
15 draw a few inferences from the age of victims and the age of  
16 the profiles of the groups. And again, it's one of those  
17 concerns.

18 MS. MICHAEL: All right. I think you could draw some  
19 inferences by the age of the victims, but it would be  
20 impossible to look at the ages of the victims and say it was  
21 one of the victims that is currently in his or her 70s who was  
22 abused at this school. And so in order to --

23 THE COURT: But it doesn't match up. The age and  
24 the -- the age and the venue do not match up.

25 MS. MICHAEL: They do not, no. All of the --

1 THE COURT: But hold on.

2 MS. MICHAEL: Yeah.

3 THE COURT: Let pick a hypothetical --

4 MS. MICHAEL: Sure.

5 THE COURT: -- location too.

6 MS. MICHAEL: Okay.

7 THE COURT: Saint X church. If I happen to live in  
8 the neighborhood of Saint X church and I happen to know someone  
9 who's in his 60s or 70s, and I now read exhibit A, and I say,  
10 were you abused back when you were in that school? I mean, and  
11 that person -- if worst. What if that person is the victim?  
12 What's happened? What have I done to -- by this public  
13 disclosure of this, haven't I, the judge, made the situation  
14 for that victim worse?

15 MS. MICHAEL: I think, in the scenario you're  
16 discussing, two issues. I want to walk a line of not saying  
17 anything that's in exhibit A, but I think that seeing a  
18 location on the list on exhibit A like Saint x --

19 THE COURT: Saint X.

20 MS. MICHAEL: -- would still not give the reader any  
21 information about the age of the person who is alleging abuse  
22 at Saint X or the circumstances around that abuse. So if that  
23 person sees the name of Saint X on a list and knows someone who  
24 happens to have been affiliated with Saint X and asked that  
25 person and through some random coincidence, that is the person



1 who was abused at Saint X. I don't think that is any different  
2 than the scenario that could be happening right now.

3 THE COURT: What If I am the questioner and I also  
4 want to say to X was never abused. But here are my friend who  
5 is my age and we both had as a teacher someone whose name is  
6 also on exhibit A, then don't I then start putting two things  
7 together and say, wait a minute. I wasn't abused. Maybe my  
8 good friend who never talks about it was.

9 MS. MICHAEL: I think that you could have that  
10 conversation with your good friend, but I would suspect that  
11 you and your good friend also had dozens of other students in  
12 your class, let alone other students who had that same teacher  
13 at that same school over the many years that that teacher was  
14 there. And so again, I don't see that as significantly  
15 different than the conversations that I think many people in  
16 the Catholic community have already, knowing that the  
17 archdiocese is in bankruptcy, knowing that these cases were  
18 being filed in state court and thinking I went to Catholic  
19 school. This didn't happen to me. But did it happen to my  
20 classmates?

21 And so when we crafted the data that was in exhibit A,  
22 we specifically did it -- we didn't include dates. We  
23 specifically did it in a way that you would have to pick a  
24 needle out of a haystack, which every once in a while that  
25 needle might get picked, but you would have to pick a needle

1 out of the haystack in order to correctly identify who was  
2 behind any of the data.

3 THE COURT: What's wrong with asking those 530 people  
4 if they mind exhibit A being produced?

5 MS. MICHAEL: Your Honor, we have no objection to a  
6 procedure, assuming that all of the other objections to the  
7 committee's motion are overruled.

8 THE COURT: Well, no, I have --

9 MS. MICHAEL: Right.

10 THE COURT: Of course, of course. I mean, I have  
11 to -- I have to make a ruling. And I may agree with the  
12 diocese and say, no, X is not going to see the light of day.  
13 But the point to you is that you seem to say that if I want  
14 those 500-plus people to have an option at least to say no,  
15 that that's doable. It seems like it's --

16 MS. MICHAEL: Yes.

17 THE COURT: -- a relatively minor expense. The church  
18 is going to have to pay for the postage, I guess. There  
19 shouldn't be a lot of lawyering involved. It should be  
20 something. Whether they actually get a draft of exhibit A or  
21 not, I haven't thought about that.

22 MS. MICHAEL: Yeah.

23 THE COURT: And maybe it's whether they have to  
24 affirmatively agree or just an opportunity to opt out.

25 Well, let's go to the next step. Let's assume this

1 mailing goes out to 550 individuals, and 5 of them say, I don't  
2 want a release. Do you then rerun the data, taking out all the  
3 all the input from those five claims?

4 MS. MICHAEL: Yes, Your Honor. That would be very  
5 easy for us to do.

6 THE COURT: So one of the -- one church or more  
7 churches might come off the list, and obviously it seems --  
8 okay. It sounds like it's doable.

9 MS. MICHAEL: Yes. Yes, Your Honor.

10 THE COURT: It would seem to me, if a hundred  
11 claimants said I want out, then it may be -- there must be a  
12 point where it's not worth the effort to produce the exhibit.  
13 But I don't know what that number is.

14 MS. MICHAEL: We would have no objection to a process,  
15 I believe, that a process that gave an opportunity to opt out,  
16 versus a process that required affirmative consent. The other  
17 thing I do want to say. You referenced mailings. I believe  
18 this was true in the procedures at the beginning of the case,  
19 but I want to be clear, if we do discuss a process like this,  
20 that the mailings would be going to these individuals' counsel.  
21 A lot of survivors do not feel comfortable receiving mail  
22 directly at their homes related to this matter but --

23 THE COURT: I'm not going to second-guess how it gets  
24 there or --

25 MS. MICHAEL: Yes.

1 THE COURT: I have had occasion in another mass tort  
2 case of some larger magnitude that's highly well known to  
3 Northern California that some fire claimants, fire victim  
4 claimants, weren't happy with their lawyers at some point, and  
5 the communication broke down. I'm not going to worry about it  
6 in this case. And I'm going to assume that the committee  
7 members themselves, who have participated and worked with  
8 counsel, have supported this outcome. And my guess is that  
9 it'll be a very small number that would want out.

10 One related question is why is it necessary for  
11 anything for exhibit A to include a list of -- the laundry list  
12 of types of abuse.

13 MS. MICHAEL: Your Honor.

14 THE COURT: Well, how does that advance the cause for  
15 the necessary process that the system has to provide to these  
16 claimants? They all know what they were subjected to. Why  
17 does the public document have to say it?

18 MS. MICHAEL: They know what they were individually  
19 subjected to, Your Honor. But one of the things we often hear  
20 from survivors in these cases, and I'm currently going through  
21 the process of sending out checks in a different case, is not  
22 understanding their claim in relationship to the other claims  
23 in the case. And so exhibit A helps survivors in understanding  
24 how their claim situates amongst all of the claims in the case  
25 and also the magnitude of the claims in the case.

1 THE COURT: Well, unlike the list that has several  
2 lines in it with only one instance, there's not one -- there's  
3 no one of types of abuse. The smallest number is two digits at  
4 least so --

5 MS. MICHAEL: Yes, Your Honor.

6 THE COURT: I understand. Okay. All right. Those  
7 are my questions. So go ahead with whatever else committee  
8 want to make, and then you get to respond to --

9 MS. MICHAEL: Okay.

10 THE COURT: -- whatever the debtor says.

11 MS. MICHAEL: Sorry, Your Honor. Go ahead with my  
12 argument? I missed --

13 THE COURT: Yeah, unless you want to reserve  
14 everything. I mean, I took a lot of time. I sort of said that  
15 you were going to have twenty minutes total and proceeded to  
16 take your time for at least twenty minutes so --

17 MS. MICHAEL: Your Honor, I'll reserve the remainder  
18 of my time.

19 THE COURT: I want you to feel free to make any other  
20 additional opening remarks you want. I'm not going to -- I'm  
21 not going to impose time limits on you in an unreasonable way.  
22 And the same will be true of debtor's counsel. This is more  
23 important. It's more important that we air this discussion  
24 fully. So what else do you want to add?

25 MS. MICHAEL: Okay. Your Honor, I would simply

1 emphasize that the committee is asking the Court to rule that  
2 the archdiocese has not met its burden to keep the claims data  
3 or the IRB minutes hidden. The claims data informs all  
4 parties-in-interest, including the survivor claimants,  
5 regarding the scope and depth of the claims, as I mentioned.  
6 And that's of central importance to this case. That is what  
7 this bankruptcy case is about.

8 THE COURT: Well, now having said I'm not going to ask  
9 any more questions, I'll proceed to ask you another question.  
10 What standard applies? Does the standard of Section 107 or the  
11 standard of Rule 26 apply? I'll just tell you. We have two  
12 sets of data.

13 MS. MICHAEL: Um-hum.

14 THE COURT: I'm going to have exhibit A, which we know  
15 comes from the claims themselves. And we have exhibit B that  
16 comes almost completely, if not a hundred percent, from the  
17 diocese. So we have case law from the Father M case that  
18 controls. We have a statute that may or may not control all or  
19 part of this. We have a Rule 26 and the case law. What  
20 standard applies to which of these two documents from your  
21 point of view? And I'm going to ask Mr. Pascuzzi the same  
22 question, obviously.

23 MS. MICHAEL: Yes, Your Honor. I believe two  
24 different standards apply to these two different sets of  
25 documents under Father M. The IRB minutes are business records

1 that were produced during discovery. The Rule 26 and the  
2 common law related to that as described in Father M is the  
3 standard that applies to those. So that is the Ninth Circuit's  
4 two step, two-and-a-half-step test, which is first looking to  
5 whether the party seeking to keep the documents private --

6 THE COURT: No, I know the --

7 MS. MICHAEL: Yes. Okay.

8 THE COURT: I know the test. So you think that  
9 applies to both sets of information?

10 MS. MICHAEL: No, I think that applies to the IRB  
11 minutes. And the Section 107 and Father M test regarding  
12 Section 107 is what applies to the claims data, which are  
13 derived from, arguably, pleadings, which are the proofs of  
14 claim and the optional supplements.

15 THE COURT: Yeah. Do you think the word "scandalous"  
16 is relevant at all to Rule 26 analysis? In other words, the  
17 Ninth Circuit takes some time telling us how to interpret a  
18 word, one word --

19 MS. MICHAEL: Yes.

20 THE COURT: -- that's found in the statute, but it's  
21 in its discussion about 107, right? Is it relevant to -- if  
22 there's scandal in the minutes, is there anything that -- it is  
23 protected under Father M, or is it free game for because Rule  
24 26 and discovery?

25 MS. MICHAEL: Your Honor, I hesitated because I think

1 the word "scandalous" is only relevant to the Rule 26 analysis  
2 under Father M if the party seeking to keep the documents  
3 private is including that in their allegations of  
4 particularized harm that they would suffer. But I don't think  
5 that is the standard under Rule 26. I think what Father M  
6 makes clear in its discussion of the personnel files is that as  
7 to documents produced in discovery, Section 107 is not the  
8 standard.

9 THE COURT: But am I correct the priest in -- I've got  
10 my Fathers M and D mixed up, but one priest had retired. One  
11 was still active. And the one who was active focused on the  
12 scandal and lost. Right. He lost the argument at the Ninth  
13 Circuit because he was still involved in the ministry.

14 So I think what I'm having trouble is reconciling  
15 these two tests. It seems to me that, if it's scandalous, it's  
16 scandalous. So do you do the three part, the two-and-a-half  
17 part or the three-part test, even if it's scandals?

18 MS. MICHAEL: Yes. I think that under Father M, if  
19 it's a document produced in discovery and under Rule 26,  
20 that -- I agree, I get which Father M or Father D confused.

21 THE COURT: Well, we have a retired father --

22 MS. MICHAEL: Yes.

23 THE COURT: -- and an active father. So we can look  
24 it up in the decision and --

25 MS. MICHAEL: So yeah.



1 THE COURT: Okay. But the one who was active, he is  
2 the one who lost at the court of appeals, right?

3 MS. MICHAEL: Yes. So ultimately, what the Ninth  
4 Circuit ruled was for the active priest, even though that  
5 potential scandal was what he argued as the particularized  
6 harm, the public interest in step two outweighed that  
7 particularized harm.

8 For the retired priest, that's where the Ninth Circuit  
9 got to the third step of their two-step test, which was to say  
10 the document could still be made public, but his individual  
11 name would be redacted in that document.

12 And here the documents we are seeking to be made  
13 public already have the names redacted.

14 THE COURT: But the trial judge, the bankruptcy judge,  
15 allowed the scandalous words to the public, and the Ninth  
16 Circuit reversed her decision on that because it interpreted  
17 the word scandalous to be literally the way the statute reads  
18 it. And that's one of the things I find difficult working my  
19 way through the case.

20 So in our case here, if the words -- and certainly, it  
21 would seem to me that the -- I'm trying to -- I'm trying to  
22 think. Well, let's try it a different way. I tell you what.  
23 I'm going to let Mr. Pascuzzi tell me what he thinks about  
24 how -- and we all have to agree that I am bound by the ruling  
25 of the Ninth Circuit, unless it's distinguishable. But when

1 the Ninth Circuit tells me how to interpret a word, one word of  
2 English language, I think I have to follow that interpretation.  
3 I don't get to apply a different interpretation depending upon  
4 whether it's a Rule 26 or a statute, I don't think.

5 MS. MICHAEL: Well, I think the Ninth Circuit told you  
6 how to interpret both of those. So in Father M, the Ninth  
7 Circuit essentially says three things. They said that as to  
8 documents produced in discovery --

9 THE COURT: Right.

10 MS. MICHAEL: -- it is not the word scandalous under  
11 Section 107 that controls. And that's how --

12 THE COURT: Even though it is scandalous?

13 MS. MICHAEL: Right.

14 THE COURT: So that's the anomaly, isn't it? Even  
15 though something, by anybody's definition, would find that  
16 statement scandalous, it's free game because it's not  
17 governed -- because it wasn't filed in a court? That seems so  
18 technical.

19 MS. MICHAEL: It does, but it is what the Ninth  
20 Circuit ruled because in the Ninth Circuit's ruling, it allowed  
21 three things to happen. It allowed the unredacted personnel  
22 file to be made public.

23 THE COURT: Correct.

24 MS. MICHAEL: It allowed the second personnel file to  
25 be made public, with the names and just the names redacted.

1 And then it denied making the punitive damages pleading public.

2 THE COURT: Which I have never read. Have you ever  
3 read it?

4 MS. MICHAEL: It's not public.

5 THE COURT: It's not public, but if somebody thought  
6 it was scandalous.

7 MS. MICHAEL: Well, and that's where the Ninth Circuit  
8 itself made this distinction between a pleading, such as the  
9 punitive damages memo, and the documents produced in discovery.  
10 And that's why the Ninth Circuit itself had two seemingly  
11 opposing results in its own decision.

12 THE COURT: Well, as a trial judge, I have to follow  
13 it. But sometimes, it's difficult to follow if it's almost  
14 defies common sense to see a word that means something until it  
15 doesn't mean that. There's something wrong with this picture  
16 and that I'm struggling with so --

17 MS. MICHAEL: Yeah. And that is why, from our  
18 perspective, what Father M instructs because it means that  
19 until it doesn't, the Section 107 and the term scandalous are  
20 not the relevant analysis for documents produced in discovery,  
21 such as the IRB documents. It's only the relevant analysis for  
22 pleadings, such as the punitive damages mention.

23 THE COURT: But to conclude -- again, I'm going to let  
24 you sit down on that point. Exhibit A is not something --  
25 exhibit A had its source from filed documents, but there's

1 nothing scandalous about it, even though it names people who  
2 are identified as perpetrators. But it doesn't -- I mean,  
3 beyond that, it's hard to know -- certainly no conduct of the  
4 survivors could be deemed scandalous.

5 And so it is simply the conduct attributed to the  
6 perpetrators might be scandalous, but it doesn't matter because  
7 under this Rule 26 third-part test, you believe that the  
8 opponents here of disclosure, who are the diocese, that they  
9 haven't met their particularized harm test and that the fact  
10 that the so-called confidential memo that none of us and the  
11 public or outside of the actual Portland bankruptcy case saw  
12 access to that document. It's sealed because it was  
13 scandalous.

14 MS. MICHAEL: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. MICHAEL: It's not the clearest guidance, but  
17 based on the results of the Ninth Circuit's decision, that  
18 seems to be the standards and the way they split their review  
19 of those documents in front of them.

20 THE COURT: Okay. So but one more point. I keep  
21 promising you --

22 MS. MICHAEL: Yeah.

23 THE COURT: -- I'm going to let you sit down, and then  
24 I promise to ask you another question. Does the committee  
25 still believe that it has the right under whatever doctrines

1 you apply to that I could order the diocese to add a committee  
2 member to the IRB? That seems to be a stretch. Are you still  
3 adhering to that view as something you think is appropriate?

4 MS. MICHAEL: No, Your Honor. And that's not  
5 something we are currently or have ever asked of yo9u.

6 THE COURT: Well, it's in your motion.

7 MS. MICHAEL: It is not.

8 THE COURT: It's not? Well, I thought it was. Then  
9 why did I read that that's one of the things you want?

10 MS. MICHAEL: In our motion, we outlined the history  
11 of our negotiations with the archdiocese on this issue. In an  
12 attempt to not have to bring this to the Court, it was one of  
13 the of the initial measures we asked for. It is something that  
14 has been done on a consensual basis in other diocesan cases.

15 THE COURT: Okay. But you're --

16 MS. MICHAEL: But I do want to be perfectly clear of  
17 what we are asking the Court --

18 THE COURT: By the way, one thing that I read for a  
19 while, and in fact, Mr. Pascuzzi made in his brief a statement  
20 that I didn't think was true, and that is that you are asking  
21 for this so-called list that the diocese maintained, but then,  
22 in fact, you didn't ask for such a list. And so you're now  
23 conceding the fact that maybe I just overlooked it because I  
24 focused on the history of the list that either exists or  
25 doesn't, but you're not asking for it, the member you want to

1 add from the committee to the IRB, which you now concede you're  
2 not seeking.

3 So I got it. I don't have to worry about it. I was  
4 prepared to say I wasn't going to authorize that because I  
5 didn't think there was any authority to do it. But we're in  
6 agreement.

7 MS. MICHAEL: Yes.

8 THE COURT: So it's a nonissue?

9 MS. MICHAEL: Yes. To be clear, the only things the  
10 committee is asking for in its motion is for the  
11 confidentiality demarcation on the IRB minutes to be removed  
12 and --

13 THE COURT: But the portions of them that are redacted  
14 stay redacted, right?

15 MS. MICHAEL: Yes, Your Honor.

16 THE COURT: So if I were to grant your request, then  
17 exhibit B, you'd be free to disseminate, but in a redacted  
18 form?

19 MS. MICHAEL: Yes, Your Honor, and that's the only  
20 form we have it in.

21 THE COURT: Well, but I have --

22 MS. MICHAEL: Yeah.

23 THE COURT: -- been provided on a confidential basis  
24 the unredacted version.

25 MS. MICHAEL: Unless the archdiocese provided that to

1 you, what we provided you was the redacted version that we  
2 received that has no perpetrator names in it.

3 THE COURT: Why do I have some highlighted portions of  
4 the IRB minutes with yellow highlight? That's usually the way  
5 I get seen -- I get documents that are sealed but unredacted to  
6 the Court. Did I get something I wasn't supposed to have?

7 MS. MICHAEL: I --

8 THE COURT: I'm not going to show it to you.

9 MS. MICHAEL: Yes. No.

10 THE COURT: But take my word for it.

11 MS. MICHAEL: Yeah.

12 THE COURT: This is exhibit B.

13 MS. MICHAEL: If there are highlights in it, then it  
14 is because there were portions in the version that the  
15 committee received that had original highlighting --

16 THE COURT: Well, look, look --

17 MS. MICHAEL: -- in it, but those were not meant to be  
18 redactions.

19 THE COURT: Look, I'm going to show you something.  
20 Okay. There is a page that has the word redacted on it.

21 MS. MICHAEL: Yes.

22 THE COURT: But I also have pages which I'm going to  
23 hold up but not let you read. I'm going to have -- oh, one  
24 second. I'm looking at the wrong version of it. I have  
25 several paragraphs that are highlighted in yellow, which is

1 usually the way I get the unredacted portions of sealed  
2 documents.

3 MS. MICHAEL: I apologize, Your Honor. I don't have  
4 those documents in front of me. I didn't want to bring any  
5 documents that we filed under seal into the public courtroom,  
6 but my best guess as to why those are highlighted in yellow is  
7 those are the portions that we refer to in our motion. But our  
8 request in the motion is simply to take the confidential marker  
9 off of the pages as we receive them, which, from our  
10 understanding and from the archdiocese, we receive those with  
11 all perpetrator names either in initials or redacted and all  
12 survivor names redacted.

13 THE COURT: Well, there's at least one person who is  
14 named throughout there.

15 MS. MICHAEL: If there are any names that --

16 THE COURT: But that's the name that also shows up on  
17 exhibit A.

18 MS. MICHAEL: Okay. Then if the Court is -- if the  
19 committee is allowed to make these documents public, before we  
20 did so, we would give the archdiocese an opportunity to review  
21 it again and make sure that they did not miss any names when  
22 they sent us the redacted version.

23 THE COURT: Well, I'm going to -- I'm just going to --  
24 I'm not going to let you leave without clarifying what I'm  
25 saying. I promise you, although at the moment, for some



1 reason, I can't locate it in the pile of papers that I'm up  
2 here on the bench with, I absolutely read a portion of what you  
3 filed that had been highlighted in yellow because it's a little  
4 harder to read.

5 MS. MICHAEL: Yeah.

6 MS. GREENWOOD: Your Honor, I'll confirm that I  
7 believe that the highlighted portions are simply what was  
8 referred to in the motion, and therefore those were to call  
9 your -- because there were so many pages that were submitted as  
10 exhibit B, whereas only a few items were referred to in the  
11 motion, I believe those were highlighted to direct your  
12 attention to it. They are not something that was redacted.  
13 That's how they -- that is how the committee received -- the  
14 committee received them without redaction.

15 THE COURT: I am a little confused here.

16 MS. MICHAEL: Can I back up and try and lay out what I  
17 believe is happening?

18 THE COURT: The brief?

19 MS. MICHAEL: Yes.

20 THE COURT: The committee's motion, which has the  
21 usual arguments and so on, that has --

22 MS. MICHAEL: Yes.

23 THE COURT: -- highlighted portions? Okay.

24 MS. MICHAEL: So --

25 THE COURT: You're saying those are not -- those

1 excerpts are in fact redacted in the actual exhibit B?

2 MS. MICHAEL: So let me back up. I think there's a  
3 few different issues here.

4 The committee's motion that you received, the unsealed  
5 version, the parts of that that we filed with redactions were  
6 highlighted on the motion. For exhibit B, the committee  
7 received everything included in exhibit B, with redactions  
8 already from the archdiocese.

9 THE COURT: Yes. Yes, which --

10 MS. MICHAEL: The representation we received from the  
11 archdiocese is that perpetrator names were redacted or  
12 initialed, and survivor names were redacted, as well as  
13 attorney-client privilege or other --

14 THE COURT: Some of the perpetrators, their  
15 initials --

16 MS. MICHAEL: Yeah.

17 THE COURT: -- were shown? But --

18 MS. MICHAEL: And then the highlighted portions in the  
19 version you received of exhibit B was simply, as Ms. Greenwood  
20 said, to draw your attention to the portions of exhibit B that  
21 we discuss in the motion so you didn't have to sort through all  
22 of the paper to get to those portions. So the highlights in  
23 exhibit B do not relate to redactions.

24 THE COURT: But what about the highlights on the  
25 brief, the motion?

1 MS. MICHAEL: Those do relate to redactions.

2 THE COURT: Huh?

3 MS. MICHAEL: Those do relate to redactions. So those  
4 are portions that the public did not see of our brief.

5 THE COURT: But I did see them.

6 MS. MICHAEL: But you did see because they discussed  
7 the documents that are currently confidential.

8 THE COURT: Listen, I'm going to -- we're going to get  
9 this straightened out.

10 MS. MICHAEL: Yeah.

11 THE COURT: But maybe after the hearing. I'll tell  
12 you, let's make it clear. I will make no decision today about  
13 exhibit B. You've conceded that the committee doesn't seek to  
14 put anybody on the board. So the thrust of the committee's  
15 request is as to B is to make it available unprotected.

16 MS. MICHAEL: Yes.

17 THE COURT: And I'm not going to do -- whether I  
18 unprotected or -- well, if I keep -- if I deny your request,  
19 it's academic. But if I grant your request, I'm going to --  
20 I'm going to clarify this, but I have to tell you that I'm  
21 looking right at the brief that has the heading unredacted  
22 version of proposed redacted disclosure motion. So if I --  
23 well, that's what's confusing, and I'm glad that I didn't read  
24 any of these aloud. I did read it on my own.

25 But if it's really a question of something that --

1 well, never mind. I'm not going to act on this exhibit today.  
2 I'm going to listen to what the debtor has to say and what you  
3 have by way of closing argument. Okay.

4 MS. MICHAEL: Your Honor, I will just leave by making  
5 very clear what the committee is asking for today. The  
6 committee is asking for the removal of confidential from  
7 exhibit B, and the committee is asking for the ability to  
8 publicly disclose the exhibit A. And the committee is not  
9 asking the Court to rule that the archdiocese do anything. Is  
10 not asking for the Court to require any actions of the  
11 archdiocese. It is simply asking for the ability to make  
12 exhibit A and exhibit B available to the public in  
13 furtherance --

14 THE COURT: But you are willing, if I insist on it, to  
15 go through at least the preliminary step of giving the  
16 survivors an opportunity to be heard on the fate of exhibit A?

17 MS. MICHAEL: Yes, Your Honor.

18 THE COURT: Okay. Okay.

19 MS. MICHAEL: Thank you.

20 THE COURT: Thanks very much.

21 Mr. Pascuzzi -- or I'm sorry. I'm sorry. You're  
22 going to make the argument? I kept referring to Mr. Pascuzzi,  
23 and I --

24 MS. COTTRELL: It's okay, Your Honor.

25 THE COURT: -- overlooked the fact that he identified

1 that you were doing -- just repeat your name so --

2 MS. COTTRELL: Amanda Cottrell for the debtor.

3 THE COURT: Okay. And --

4 MS. COTTRELL: I'm with Sheppard Mullin.

5 THE COURT: No, thank you. And I'm not going to hold  
6 you to any strict time limits. I apologize for the confusion  
7 here.

8 MS. COTTRELL: I appreciate that, Your Honor. I want  
9 to start with your last question to Ms. Michael about what  
10 standard applies. I think Your Honor honed in on the specific  
11 question, and it's very clear. Father M, which is decisional  
12 in this case, the Ninth Circuit is clear that it distinguishes  
13 between documents that are filed with your staff in this  
14 court --

15 THE COURT: Like proofs of claim.

16 MS. COTTRELL: And like the IRB minutes that are  
17 currently filed under seal, exhibit B, on your stand.

18 THE COURT: But they're not -- so they are "not  
19 filed"?

20 MS. COTTRELL: No, they're very much filed.

21 THE COURT: Well, okay. But --

22 MS. COTTRELL: There's a redacted -- there's a  
23 redacted motion that has an attachment that's a pleading in  
24 this proceeding. 107 doesn't parse between file but not seal,  
25 and that would make no sense because all of the documents in

1 Father M that were seeking disclosure were filed under seal.

2 The sealing order is not the distinction. It's  
3 whether or not the documents were simply in the lawyers' filing  
4 cabinet as unfiled discovery, never to be filed with the court,  
5 sealed or unsealed, or they were filed. And the Ninth  
6 Circuit's very clear there's two different standards.

7 So taking it in order, we have the exhibit A, what the  
8 committee counsel has prepared, is an aggregated claim summary.

9 THE COURT: Right, but extracted from the proofs of  
10 claim, right? Agree?

11 MS. COTTRELL: So 107 controls.

12 THE COURT: Can you agree with me that?

13 MS. COTTRELL: 107(a) and (b) controls, as does this  
14 Court's bar date order. We already have a controlling order in  
15 this case.

16 THE COURT: Right. But what specifically does 107  
17 dictate must remain private?

18 MS. COTTRELL: For the claims data, sir?

19 THE COURT: Hmm?

20 MS. COTTRELL: I didn't hear your question. I  
21 apologize.

22 THE COURT: Well, you're saying that 107 controls.  
23 But therefore what? What doesn't get public?

24 MS. COTTRELL: So when it comes --

25 THE COURT: Because the presumption still is public

1 unless, public unless, scandalous or defamatory.

2 MS. COTTRELL: Understood. So --

3 THE COURT: Right? Isn't that what 107 says?

4 MS. COTTRELL: 107 supplants the common law.

5 THE COURT: Right.

6 MS. COTTRELL: And 107 controls. And you're right.  
7 Public access, unless one of the three exceptions apply. And  
8 the exception that applies here is scandalous or defamatory.  
9 107(b)(2).

10 THE COURT: Correct. That's what I just asked back to  
11 you. Okay.

12 MS. COTTRELL: And the Ninth Circuit has defined  
13 scandalous, that's what you focused on, just based on the  
14 dictionary definition. It actually rejected the lower court's  
15 definitions.

16 THE COURT: Correct.

17 MS. COTTRELL: Now, you said earlier, the Court might  
18 not know what that punitive damages memo entailed.

19 THE COURT: Why would --

20 MS. COTTRELL: We can't read it. But the Ninth  
21 Circuit describes it in detail. In the beginning of that  
22 opinion, it tells in the public that it was a filed memorandum.

23 THE COURT: And by the way, I have it sitting here  
24 but --

25 MS. COTTRELL: So it's --

1 THE COURT: -- where are you reading in the decision?

2 MS. COTTRELL: It's at pincite 422.

3 THE COURT: Yeah. Okay.

4 MS. COTTRELL: And it's the grammatical paragraph  
5 beginning, "In connection with the negotiations to settle the  
6 damages claims".

7 THE COURT: Yes. Yes, I'm reading it.

8 MS. COTTRELL: The memorandum summarized the pattern  
9 and practices evidence and the punitive damages evidence in  
10 support of the estimation of five unresolved tort claims. The  
11 memo included attachments, twenty-seven priests personnel  
12 files, including these two, deposition excerpts, and documents,  
13 and they were filed under seal.

14 So when considering that motion, it's quite analogous  
15 to the IRB minutes. The IRB minutes, the committee admits in  
16 its motion, goes to the investigation of the pattern and  
17 practices of child abuse allegations. And the Ninth Circuit  
18 holds definitively that, whereas here, there's a document that  
19 includes allegations that a priest or clergy has abused and  
20 sexually assaulted a child. That is scandalous. And that's  
21 the law of this circuit that the Court must follow.

22 THE COURT: But it was scandalous, but they still  
23 allowed it for disclosure for the priest who was not retired.

24 MS. COTTRELL: Only as to his single personnel file.  
25 There is no motion before Your Honor to publicly disclose any



1 of the alleged perpetrators' personnel files. We are before  
2 the Court on internal minutes for a ministerial church purpose.  
3 This is governed by church canon law. Its ecclesiastical  
4 norms. As a matter of church law, they are required to have an  
5 internal review board for this purpose.

6 The internal review board has limited scope insofar as  
7 it's confidential. It's a deliberative body. It's comprised  
8 of several members. These are former police personnel. People  
9 involved in victim assistance. There's been former judges.  
10 Right. This is an independent body that reviews allegations  
11 and makes recommendations for whether these priests can have  
12 faculties with the church and they can serve in ministry. It  
13 is an internal --

14 THE COURT: No, I understand that. I understand that.

15 MS. COTTRELL: -- deliberation for how the church is  
16 going to run the church.

17 THE COURT: And it discloses some of those  
18 deliberations?

19 MS. COTTRELL: And it discloses some of the  
20 allegations of sexual --

21 THE COURT: And if I'm not mistaken, it exonerates one  
22 individual, who otherwise appears on exhibit A as a  
23 perpetrator.

24 MS. COTTRELL: I would agree with Your Honor.

25 THE COURT: Pardon?

1 MS. COTTRELL: I would agree with Your Honor.

2 THE COURT: You agree?

3 MS. COTTRELL: With that last statement of yours.

4 THE COURT: You agree?

5 MS. COTTRELL: That the committee has identified and  
6 by name in their motion, not redacted, a priest who's retired.  
7 He's older. And they call him out by name as sort of the focus  
8 of the relief requested.

9 THE COURT: Right.

10 MS. COTTRELL: And the review is without any  
11 investigation or adjudication that because the IRB ran a  
12 process that they disagree with, they want to publish all of  
13 the IRB minutes.

14 THE COURT: No, no, but I think you are agreeing with  
15 me, right? In other words, the IRB minutes reflect the fact  
16 that the membership, that board, chose to leave -- not, I mean,  
17 still leave in good standing at least one individual, who I'm  
18 not -- whose name I'm not going to repeat, but who is named on  
19 the committee's exhibit A?

20 MS. COTTRELL: That's correct.

21 THE COURT: Okay. So therefore, that deliberative  
22 body chose not to discipline or whatever is -- depublish or  
23 whatever the right word is. Chose not to take that individual  
24 off the rolls. And therefore, that's consistent with what  
25 you're saying they do, right? Right?

1 MS. COTTRELL: It's consistent that they have to make  
2 a determination.

3 THE COURT: It's consistent that they have to make a  
4 determination, and they made a determination. And that's one  
5 of the things that you want to protect because it's their  
6 deliberations as an internal managerial entity that's of a  
7 creature of the church's management, if you will.

8 MS. COTTRELL: Exactly. Church autonomy --

9 THE COURT: Yeah. Yes, yes. Right.

10 MS. COTTRELL: -- in a ministerial act.

11 THE COURT: Right.

12 MS. COTTRELL: Your Honor, the overarching issue in  
13 this motion, in addition to those First Amendment issues that  
14 we're flagging, is that it's simply not for a bankruptcy  
15 purpose. It's not focused on any objectives in this  
16 proceeding. This Court's jurisdiction is --

17 THE COURT: Yeah, well, that's true. But I mean, some  
18 people about the survivor statements, too, but --

19 MS. COTTRELL: But let's focus on what courts have  
20 said about this issue in similar situations and agreeing with  
21 the debtor's position and opposition. 105 is not a roving  
22 mandate to do equity. It has to be tied to something in the  
23 Bankruptcy Code. Now, in the Milwaukee case, years after that  
24 bankruptcy case had closed, the State of Wisconsin --

25 THE COURT: No, I what -- yeah.

1 MS. COTTRELL: Yeah. Intervened, wanting --

2 THE COURT: I read that.

3 MS. COTTRELL: -- to get the same sealed proof of  
4 claim information. Among the defects in that motion is that  
5 the bankruptcy court there said 105(a) is not a roving license  
6 to ignore the binding effect of previous orders, like it would  
7 be this Court's bar date order that protects the proof of claim  
8 forms and the supplemental proof of claim form.

9 Your Honor, just to note, in your controlling order  
10 from November 21st, 2023 on this issue --

11 THE COURT: You need to turn your phone off, please,  
12 ma'am. Let's wait till she gets that turned off.

13 UNIDENTIFIED SPEAKER: Sorry.

14 UNIDENTIFIED SPEAKER: It's okay.

15 THE COURT: It's all right. It happens. It's  
16 happened to me.

17 MS. COTTRELL: Your Honor.

18 THE COURT: But I don't hold myself in contempt, nor  
19 you.

20 MS. COTTRELL: So in the November --

21 THE COURT: You're talking that November 21st order,  
22 docket 337.

23 MS. COTTRELL: Yeah, 337, Your Honor.

24 THE COURT: What paragraph?

25 MS. COTTRELL: Page 8. It's 18(d). "The court sets

1 out the it has already previously defined that permitted  
2 parties that can use the survivor proof of claims and any  
3 confidential information from those proofs of claims in the  
4 supplemental claims form. And it sets out the purposes. Its  
5 connection with the valuation, prosecution, and defenses of  
6 claims in this proceeding. Other contested matters in this  
7 proceeding, insurance/reinsurance coverage issues, settlement  
8 negotiations, and mediations. It is never contemplated in the  
9 order that this confidential information would be published,  
10 despite the strictness of confidentiality promises throughout  
11 the motion, the hearing that devolved into the Court's order  
12 that we've looked at.

13 THE COURT: And how is the -- how is the diocese  
14 harmed if I disclose it -- if I authorize this? How is your  
15 client hurt, harmed by doing it if the survivors consent? And  
16 you need.

17 MS. COTTRELL: Yeah. Let me think about it. No, I  
18 understand your question.

19 THE COURT: I don't believe the committee used the  
20 word "standing", but I'm going to use the word "standing".  
21 Where is the diocese standing to complain about the protections  
22 that were there to protect the survivors? And maybe the  
23 survivors consent to the disclosure of what I'll call the  
24 extracted data. How is this -- how is the diocese harmed by my  
25 allowing that to happen?

1 MS. COTTRELL: Understood. Your Honor, I don't think  
2 that the protections of confidentiality, once entered, only  
3 benefit the survivors. I know there's repeated statements that  
4 the committee is focused on. But ultimately, the parties  
5 negotiated this order and agreed to the entry. And this  
6 information was to be kept confidential.

7 But the harm, let's focus on the exhibit A and some of  
8 the observations. Many of the proofs of claims are just signed  
9 by lawyers. They're not signed under penalty of perjury. And  
10 this exhibit A is drafted by lawyers. It's drafted lawyers'  
11 interpretation of what those 500, 550-plus proofs of claims  
12 say.

13 THE COURT: I'm going to interrupt you there. I'll  
14 accept your representation that the proofs of claim might be  
15 drafted by lawyers. But you, as the diocese lawyer, have  
16 access to those same proofs of claim, and you can make sure  
17 that what the committee has extracted on exhibit A is  
18 consistent with the information in the proofs of claim.

19 So it isn't as though they're pulling a fast one on  
20 you. You can see that they got it right, and if they counted  
21 the wrong church or they counted the number of incidents or  
22 they counted the number of times a particular priest was  
23 identified and they got it wrong, you're there to correct it if  
24 you want to. It's the same -- it's 537 proofs of claim, but if  
25 there were only two proofs of claim, you could pull out the

1 data from two proofs of claim if you can pull it out from 527  
2 proofs of claim. Right?

3 THE COURT: There might still be some interpretation  
4 disputes, but accepting that proposition, to answer the Court's  
5 direct question, you asked Ms. Michael about this idea of, if  
6 claimants don't know about this process, how would they be  
7 harmed. And I want to focus on her answer because that directs  
8 harm at the debtor.

9 THE COURT: Okay.

10 MS. COTTRELL: She answered that, well, Your Honor,  
11 we're not putting the age of the person today. That's not  
12 stated. The date of the alleged event, that's something that's  
13 not stated. There's vagueness. Her answer to the Court was  
14 court was the vagueness of some of the information is what  
15 ultimately answered your hypothetical question of what do we do  
16 in the parish where there's one victim and one accused.

17 And there's an issue that the Court identified, and  
18 the answer from the committee counsel focused on the vagueness.  
19 But that same vagueness, the exhibit A is presented to the  
20 Court, which is all you have before you, it harms the debtor  
21 because it doesn't identify the age of these allegations and  
22 the temporal distance from present times.

23 THE COURT: But the debtor knows the age.

24 MS. COTTRELL: Yeah, but the public doesn't. The  
25 whole purpose, Your Honor --

1 THE COURT: No, that's true. I agree.

2 MS. COTTRELL: -- is not to inform the debtor, not to  
3 inform the committee or this Court or any of the claimants on  
4 the proofs of claims. Your Honor, the general public is not a  
5 creditor or a party to this action --

6 THE COURT: No, that's true.

7 MS. COTTRELL: -- and they're the only stated  
8 beneficiary of this motion. But the harm to the debtor --

9 THE COURT: Well, but that's not a -- that's not a --  
10 that's not an insignificant fact, given the policy of  
11 openness and if you want to use the current word "transparency"  
12 of court proceedings and certainly the philosophy of Section  
13 107.

14 MS. COTTRELL: I would agree with you.

15 THE COURT: Okay.

16 MS. COTTRELL: But what court proceeding is this  
17 relief for? We don't have an adversary proceeding. We don't  
18 have an upcoming hearing. They don't want to de-designate for  
19 an evidentiary proceeding or a deposition. It is in a vacuum  
20 that they want to take the materials produced and now filed  
21 with the Court under confidentiality and seal and publish them  
22 for the entire world.

23 THE COURT: So what's the harm?

24 MS. COTTRELL: The harm is, is that that the exhibit A  
25 is misleading. The harm is, is that this information doesn't



1 identify the distance and time. I think it's still subjective.  
2 And then it's damaging to the list of the accused. Your  
3 Honor --

4 THE COURT: I'm sorry. Say again.

5 MS. COTTRELL: It's damaging to the names on the list.  
6 These individuals haven't been adjudicated. They didn't come  
7 in and in and litigate their claims. And it just says one  
8 parish. They'll have one list. And just like you said, well,  
9 can't someone identify one victim and one parish in the high  
10 school they all went to? Well, you could do the same thing  
11 with the priests. And then you start these very vague  
12 allegations of harm.

13 And so it fits right in with Father M is that it meets  
14 the definition of 107(b)(2), which is these are allegations  
15 against these priests. And it's scandalous under the  
16 Bankruptcy Code's definition.

17 Your Honor, you said earlier to Ms. Michael, are you  
18 asking me to compel the debtor to publish a list of credibly  
19 accused? And she said no because they've created one. They  
20 created a list of accused for the proofs of claim, and they  
21 want the Court to publish that list.

22 THE COURT: Well, I don't think that's a fair  
23 statement. By the way, Ms. Cottrell, it was actually in a  
24 brief on your side that criticized the debtor for doing what  
25 the debtor isn't doing. And so I talked specifically -- and

1 give me a second, and I'll show you. Maybe you know what I'm  
2 referring to.

3 I'm looking at document number 1028. That's the  
4 debtor's opposition. And it says that the sole purpose of the  
5 committee's motion is to override the debtor's First Amendment  
6 rights -- I'm skipping some words here -- and post on the  
7 website -- on the debtor's website, namely a so-called credibly  
8 accused priests list. But I've been reading the papers that no  
9 such list exists.

10 MS. COTTRELL: That's correct, Your Honor.

11 THE COURT: And so the statement, then, you're  
12 seeking -- at first, it was hard for me to believe that that's  
13 really true because -- and I'm not suggesting you're lying or  
14 anyone or the diocese is lying. But the diocese knows who the  
15 perpetrators -- who the accused -- excuse me. The diocese  
16 knows from the proofs of claim and the state court cases who  
17 the claimants are and who the alleged perpetrators are. And  
18 all you have to do is count, and you have a list. Now, maybe  
19 you didn't write a list on a piece of paper or on an electronic  
20 document, but if you see the names of A, B, and C, that's a  
21 list.

22 So I don't know whether a list exists or not. And if  
23 it exists, but only in people's minds, it's still a list. But  
24 the statement in the brief is that committee is forcing a list  
25 of credibly accused priests, and its counsel just said, no,

1 we're not. So how am I supposed to resolve this inconsistent  
2 terminology here?

3 MS. COTTRELL: Well, let me give a try.

4 THE COURT: Well, I mean, you gave it a try.

5 MS. COTTRELL: Well, can I --

6 THE COURT: But the point is, exhibit A is a list of  
7 credible -- is a list of accused priests. Maybe they aren't  
8 credibly accused, but there is a list there. Go ahead.

9 MS. COTTRELL: So in the motion filed by the  
10 committee, exhibits, I believe, G and H, the committee include  
11 correspondence. And the correspondence on January 10th of  
12 2025, January 18th of 2025, the committee counsel demands that  
13 the debtor publish a list -- three things. Publish a list of  
14 credibly accused, put a person of their choosing on the IRB, --

15 THE COURT: Right. Right.

16 MS. COTTRELL: -- and then we remove a particular  
17 priest from the list of good standing, which is on their  
18 website, and anyone can go look.

19 THE COURT: Right. Right.

20 MS. COTTRELL: And the final letter --

21 THE COURT: So we got the -- we got the -- the member  
22 of the IRB is off the table now?

23 MS. COTTRELL: Right. The final letter on January  
24 31st from Mr. Stang said because you won't concede these three  
25 points, and in their motion they say because Your Honor can't

1    compel those issues, our alternative -- and they say this  
2    beginning in paragraph 5, numbered 5, page 3 of -- absent the  
3    release of a credibly accused list to protect children -- this  
4    is their motion -- the committee believes the survivors and the  
5    public will benefit from the disclosure of the claims data and  
6    access to the IRB minutes.

7                So in lieu of those things that they want that they  
8    don't believe this Court can compel, there's these alternatives  
9    that that are before the Court in exhibits A and B. And  
10   exhibit A, my point was, is that they've created a list of  
11   accused that they'd like published.

12               THE COURT: But you're telling me there is no list of  
13   credibly accused priests. And yet the reason why it's hard for  
14   me to believe that is because whether it's an individual, you  
15   or -- what I'm getting at is this. Statistically -- no, not  
16   statistically. Historically, somebody in the records of the  
17   diocese knows the name of every priest who has ever served in  
18   the diocese, and it also knows the names of every priest who is  
19   currently serving.

20               So all you have to do is subtract the second list from  
21   the names in the first, and then you know all the ones who have  
22   passed away or all the ones who have left the priesthood and  
23   all the ones that have gone on something else. And then what's  
24   left can be what's left. And it may well be that the name of a  
25   priest that's still on that list, who was neither accounted for

1 as dead or transferred or left the ministry and gone off to be  
2 a lawyer or something else, it doesn't mean they all were  
3 credibly accused. But based upon the fact that the diocese has  
4 been dealing with state court litigation for years knows who  
5 has been accused, and it can then determine within that list  
6 which ones are credibly accused.

7 So if there were just discovery, a simple discovery  
8 motion, give me the list of everybody in the -- every priest  
9 who has ever served in the diocese who has been credibly  
10 accused, you could create a list, even if there none exists.  
11 Just like any other discovery request, you could make a list of  
12 people that fit a definition. Right. Why couldn't you? If I  
13 said to said to you, give me a list of everyone that's ever  
14 worked in your law firm, you personally might not know, but  
15 somebody could.

16 MS. COTTRELL: I agree it's possible.

17 THE COURT: Okay. So the point is --

18 MS. COTTRELL: But it's just --

19 THE COURT: -- it's discoverable, isn't it?

20 MS. COTTRELL: We've engaged in extensive --

21 THE COURT: Pardon? I'm sorry. Say again.

22 MS. COTTRELL: We've engaged in extensive discovery  
23 regarding pre-petition claims.

24 THE COURT: Has anybody asked you for a list of  
25 everybody who's been credibly accused?

1 MS. COTTRELL: They've asked if we maintain a list of  
2 credibly accused.

3 THE COURT: No, but I'd ask, can you give them a list?  
4 Have they asked -- have they asked if you could -- their name  
5 for me -- this is a hypothetical -- someone from either a  
6 plaintiff or the committee -- says interrogatory one. What are  
7 the names of every priest who has been credibly accused of  
8 abuse? Why couldn't you -- why couldn't that list be produced?

9 MS. COTTRELL: Your Honor, I think if you edited your  
10 request and you made it time limited, something that folks  
11 could research. But just accused, what does accused mean? Is  
12 this a letter? Is this a lawsuit?

13 THE COURT: What does the diocese consider to have  
14 been credibly accused?

15 MS. COTTRELL: Again, as an archdiocese, we don't use  
16 that terminology.

17 THE COURT: I understand, but you could.

18 MS. COTTRELL: We could, but we don't. And the  
19 reality is that's the issue here.

20 MR. GASPARI: Your Honor, might I intervene for a  
21 minute?

22 THE COURT: No, not right now. I'll come back -- I  
23 mean, when we're done. But I want to just continue it, and  
24 then I'll let you let you say, obviously.

25 MS. COTTRELL: Your Honor, so we create a list. Is

1 that then -- and then are we here on a second version 2.0 of  
2 the motion to publish that discovery answer?

3 THE COURT: No, I don't know. I'm trying to figure  
4 out what to do because again, I go through -- I read the brief  
5 and I say, well is there a list there, or isn't there a list?  
6 And then I'm told they're not looking for a list. But then  
7 you're telling me that they've actually reverse engineered a  
8 list.

9 MS. COTTRELL: From the proofs of claims that are  
10 filed in this lawsuit, and that information is confidential,  
11 strictly confidential, under the bar date order.

12 THE COURT: I know, but then we're back to --

13 MS. COTTRELL: 107(b).

14 THE COURT: We're back to do you have standing to make  
15 that argument for the beneficiaries of that confidentiality.  
16 And you gave me your answer. Whether it was a fiction or not,  
17 I don't know, but you gave me an answer. You did. I mean, you  
18 did. Of course you did.

19 MS. COTTRELL: I don't think the -- well, I haven't  
20 seen any of the reported case law in these other several dozen  
21 archdiocesan dioceses bankruptcy proceedings where courts found  
22 the debtor lacked standing to raise these kinds of issues in  
23 confidentiality matters.

24 THE COURT: Does that mean therefore it has standing?

25 MS. COTTRELL: Well --

1 THE COURT: I don't know. I mean --

2 MS. COTTRELL: -- for instance, Judge Lafferty in the  
3 Oakland case recently considered similar issues. We presented  
4 those transcripts. And the debtor was heard. And the court --  
5 so and this district agreed that the information satisfied  
6 107(b), and he didn't release confidential claims information.  
7 And that was driven by the debtor's motion.

8 THE COURT: That doesn't mean -- I may agree. I  
9 haven't decided. I promise you, I haven't decided this.  
10 That's why we're having this long hearing.

11 MS. COTTRELL: Yeah. Well, to the extent that it's a  
12 claim against the estate and there's a controlling  
13 confidentiality order, their motion doesn't seek to amend your  
14 order or modify it. I understand the Court could always do  
15 that on its own. And the relief they're seeking is to leave  
16 the order in place and without consent of any of the claimants,  
17 publish a summary list.

18 THE COURT: Well, you know what I thought -- what I  
19 thought the committee's motion was doing was asking, like, a  
20 comfort order. They said something like that, sort of a  
21 clarification -- or not the word. Let me get the word used  
22 correctly. It has serious concerns. No, I'm sorry. Excuse  
23 me.

24 Well, I don't want to sit here and try to read  
25 something, but I thought in the preamble to this motion, it was



1 sort of like we're kind of -- we think we can disclose this,  
2 but we just want to clarify that maybe we can.

3 Now, the gentleman that wanted to speak. I'm sorry,  
4 now I --

5 MS. COTTRELL: Can I just -- before Mr. Gaspari comes  
6 up, I have a point I want to make sure I emphasize, Your Honor.

7 THE COURT: Yes.

8 MS. COTTRELL: 107(b), if it applies, if the exception  
9 applies this is scandalous material, the case law says it's  
10 without exception. You don't then balance public interest in  
11 the data. Father M said that specifically, as do the other  
12 cases cited by the committee.

13 The Anthracite case says the court is required to  
14 protect the information and has no discretion to disclose once  
15 the information fits within one of the categories of 107(b).

16 Father M states on page 431, "Under Section 107, the  
17 strengths of the public's interest in a particular judicial  
18 record is irrelevant. If the exception pertains, the  
19 bankruptcy court must issue a protective order."

20 THE COURT: Wait. I'm sorry, which case is that?

21 MS. COTTRELL: Father M.

22 THE COURT: Oh, that's out of the Father M? Okay. I  
23 thought you were --

24 MS. COTTRELL: On page 431.

25 THE COURT: -- citing another case. Excuse me.

1 MS. COTTRELL: The In re: Anthracite, 492 B.R. 162.  
2 It's the Southern District of New York bankruptcy case from  
3 2013 the committee cites in its reply says the bankruptcy court  
4 has no discretion once one of the exceptions to 107 apply.

5 THE COURT: That's not cited in your --

6 MS. COTTRELL: No, they raised it in the reply brief  
7 that was filed in this proceeding.

8 And Your Honor, I would like to point out one  
9 additional comment before Mr. Gaspari stands up.

10 The stipulated protective order defines confidential  
11 information, capital C, capital I, for discovery materials. So  
12 in your hypothetical, you said, well, couldn't they just serve  
13 an interrogatory? The stipulated protective order would apply  
14 to that interrogatory. The parties, with the Court's  
15 assistance, define confidential information. And in paragraph  
16 12, we define confidential information to specifically include  
17 for discovery materials the Court deems fits 107(b).

18 The parties entered in that order knowing what Father  
19 M says. We incorporate it into the disclosure of discovery  
20 materials the 107(b) standard, and that's the controlling order  
21 that's in this proceeding. And so what --

22 THE COURT: Tell me again the paragraph number of  
23 the --

24 MS. COTTRELL: It's paragraph 12 of --

25 THE COURT: 12 of the protective order?

1 MS. COTTRELL: -- stipulated protective order, which  
2 is --

3 THE COURT: No, I understand.

4 MS. COTTRELL: -- docket 370.

5 THE COURT: No, I know what it is. I'm just trying to  
6 keep up with what you're saying to keep my notes because I have  
7 the protective order here, and I've gone through it. But I  
8 didn't remember the paragraph number. Okay.

9 Now, I want to let the gentleman speak. You can just  
10 stay there. Just identify yourself and make your --

11 MR. GASPARI: Thank you, Your Honor. Paul Gaspari,  
12 state --

13 THE COURT: Oh, Mr. Gaspari, I just didn't recognize  
14 you. Sorry.

15 MR. GASPARI: No problem, Your Honor. And relative to  
16 your -- I just wanted to address your question, why can't there  
17 be a simple interrogatory that you would then answer. Really,  
18 two points. One, in the context of this courtroom, and again,  
19 I don't want to tread on Mr. Cottrell's bankruptcy expertise,  
20 of which I have none, but there would be no bankruptcy purpose  
21 for answering such an interrogatory --

22 THE COURT: Well, if you're not going to use  
23 bankruptcy expertise, why are you citing a bankruptcy  
24 principle?

25 MR. GASPARI: Well, but I wanted to do was say in

1 state court -- and that's where I've litigated these cases  
2 in --

3 THE COURT: Right. Understood.

4 MR. GASPARI: -- state court -- there would be an  
5 objection to that question based upon the California doctrine  
6 of not reasonably calculated to lead to admissible evidence  
7 because in each one of the individual cases, all that is  
8 relevant is what the archdiocese knew or did not know about a  
9 particular perpetrator. We've litigated this --

10 THE COURT: But that's an ultimate question, isn't it?

11 MR. GASPARI: But we've litigated this over and over  
12 and over again in state court --

13 THE COURT: Okay.

14 MR. GASPARI: -- and would not be required under  
15 California law to just disclose anybody that's been accused  
16 over the past thirty years. It's got no relevance to a  
17 particular -- to a particular state court action.

18 THE COURT: Okay. Well, all right. I appreciate  
19 that.

20 MR. GASPARI: Thank you, Your Honor.

21 THE COURT: All right. Ms. Cottrell, do you want to  
22 add anything further?

23 MS. COTTRELL: I just have a final point, Your Honor.  
24 In the reply, the committee says that they withdrew their  
25 request. The IRB minutes, exhibit B, can stay sealed. And I

1 would just submit that if it's satisfies sealing doctrine in  
2 doctrine in the Ninth Circuit, then it certainly means that the  
3 information is satisfying 107(b). And that was the statement  
4 in the reply, that they're no longer seeking to unseal exhibit  
5 B. And so I think, as of today, that's a problem in terms of  
6 they've clawed back some of their relief.

7 THE COURT: I'm sorry. I just missed the point again,  
8 you're making. We had this confusion that I've had with  
9 exhibit B. What's redacted, and what isn't. I understood that  
10 what the committee wants to do is to take off the limitations  
11 on what was stipulated to. This would be a confidential  
12 document but that they would now be free to disseminate it, but  
13 they couldn't unredacted it. And I thought that that's what --

14 MS. COTTRELL: Well --

15 THE COURT: -- their counsel conceded the point.  
16 They're not seeking to unredact. They're just seeking to  
17 unseal, if you will, the document.

18 MS. COTTRELL: Well, my point was slightly different,  
19 Your Honor, which is that it is currently filed in this  
20 proceeding under seal. And there's a standard for sealing, and  
21 nobody has opposed the sealing. We all agree that it should be  
22 sealed. And in their reply, they took back some. They said we  
23 want limited relief. We only want you to remove the redaction,  
24 and exhibit B can stay sealed.

25 And I'm just pointing out that that's inconsistent

1 because if it's a sealed document, 107(b) controls. It's  
2 scandalous. It needs to be protected. And I just wanted to  
3 point out that issue. I understood your earlier question to  
4 them being focused on that issue in their reply.

5 THE COURT: Okay.

6 MS. COTTRELL: And finally, Your Honor, in the reply  
7 they cite, beginning in footnote 9, a list of state court  
8 orders, mostly from New York state courts, their orders from  
9 state trial courts in single-plaintiff actions of personal  
10 injury cases for orders to compel. They're principally orders  
11 where the plaintiff against a priest or the diocese in that  
12 case, they're seeking an individual priests' usually a  
13 psychiatric, medical evaluation.

14 But I wanted to end with this, Your Honor, because the  
15 cases largely prove a point. This isn't a motion to compel.  
16 They have the files. We are not here saying that the committee  
17 is not entitled to the records. We've produce them after much  
18 objection. We wrote written objections to them. But after  
19 many weeks of conferrals, we agreed to produce them as  
20 confidential under the protective order. So there's no lack of  
21 information for the parties in this case to mediate and address  
22 the issues that the Court's considering.

23 THE COURT: Correct. Correct.

24 MS. COTTRELL: But in one of the orders that they  
25 cite, I'm going to say it wrong, Your Honor, but it's the

1 Lisiecki v. The Roman Catholic Archdiocese of New York. The  
2 first, it's L-I-S-I-E-C-K-I. State court order concerning a  
3 concerning a Father O. And they wanted his medical records and  
4 tests. And what's interesting is that decision distinguishes  
5 between that medical record that doctors write up and the  
6 review board minutes.

7 In that order that they cite to the Court, the state  
8 court says that this medical record, it doesn't itself contain  
9 internal church communication. It references medical tests.  
10 It's on the clinic's letterhead. It emphasizes that a doctor  
11 wrote it, and he doesn't have any decision making authority  
12 within the church over the father. He's not part of the  
13 Archdiocese of New York. But that Lisiecki's order that they  
14 presented to Your Honor ends with:

15 "The defendant is correct that the issue of whether  
16 the church complied with its internal policies is  
17 beyond this court's ambit. The only stated reason for  
18 the Court to disregard 107(b) protection is an  
19 improper purpose. They want -- the court" -- or "the  
20 public", pardon, "to publicly assess the IRB process  
21 and determine court of public opinion what the public  
22 thinks about that internal process at the church."

23 There's no bankruptcy purpose. There's no  
24 nonbankruptcy judicial purpose for releasing this information.  
25 And we ask, Your Honor, that you deny the motion in its

1 entirety. Thank you.

2 THE COURT: Okay. Thank you very much.

3 Ms. Michael, closing remark.

4 MS. MICHAEL: Your Honor, to start with, again, I want  
5 to focus on the two different buckets of documents we're  
6 talking about or information we're talking about here. The  
7 archdiocese interpretation of Father M does not explain Father  
8 M's decision to allow those personnel files to be made public.

9 If Section 107 applies to any documents or information  
10 in the case, then that interpretation does not reconcile with  
11 the treatment of the personnel files under Father M. Here, the  
12 IRB minutes, just like the personnel files, are documents that  
13 were produced in discovery. They are not pleadings in this  
14 court. And the only way for the Father M case to make sense in  
15 its various outcomes is to see the distinction between  
16 documents that are produced during discovery and pleadings in  
17 the court.

18 Additionally, opposing counsel noted that the parties  
19 entered into the protective order knowing what Father M says.  
20 What Father M also says on pincite 424, the third paragraph in  
21 section 2(a) is --

22 THE COURT: Hold on. Hold on. Let me just get it  
23 with you. Got my Father M decision here. 424?

24 MS. MICHAEL: Yes.

25 THE COURT: Okay.



1 MS. MICHAEL: Paragraph starting, "While courts  
2 generally make a finding of good cause".

3 THE COURT: Yep.

4 MS. MICHAEL: Says, "when a protective order was a  
5 stipulated order and no party has made a good cause  
6 showing, then the burden of proof remains with the  
7 party seeking protection. If a party takes steps to  
8 release documents subject to the stipulated order, the  
9 party opposing disclosure has the burden of  
10 establishing that there is good cause to continue the  
11 protection of discovery material."

12 From there, the Ninth Circuit goes on to outline its  
13 two-step process of determining whether there's good cause to  
14 continue protection of discovery of the material. So  
15 regardless of any stipulated protective order in the case, it  
16 does not make the archdiocese immune to having to meet that  
17 two-step process under Father M to keep the IRB minutes  
18 protected.

19 THE COURT: Okay.

20 MS. MICHAEL: And lastly, because there has been a  
21 good deal of confusion, I want to state on the record clearly  
22 as to the IRB minutes exactly what the committee is asking for.  
23 The committee is asking for the documents filed as exhibit B to  
24 have the confidentiality mark on those documents removed as  
25 they are. That is the sole request the committee is making as

1 to exhibit B.

2 THE COURT: So I have a copy that I just took from the  
3 binder that you gave me that is exhibit B. And where do I find  
4 the word "confidential"? Where do I find the label? I see, on  
5 the very first page, is a title page. "Archdiocese Independent  
6 Review 2015". Then it's the bylaws. And then a couple of  
7 pages with, like, a heading. And then there is the information  
8 of the members of the board with some redactions.

9 MS. MICHAEL: Yesa.

10 THE COURT: Now, perfectly reasonable redactions, like  
11 the phone numbers and cell numbers of members of the board.  
12 But you want that removed or left redacted? What are you --  
13 what are you asking for? Do I redact these members' phone  
14 numbers?

15 MS. MICHAEL: No, Your Honor, the committee is not  
16 asking for any redactions to be removed from those documents  
17 so --

18 THE COURT: And what would I do if I wanted to produce  
19 the finished product that in your mind should be available to  
20 the public?

21 MS. MICHAEL: At the bottom of the page, there should  
22 be, with the Bates stamp, a confidential --

23 THE COURT: Confidential, subject to mediation  
24 privilege?

25 MS. MICHAEL: That is all we are asking to be removed.

1 THE COURT: And that would -- at least if the local  
2 media got a hold of it, they would know they still can't get  
3 the members phone numbers --

4 MS. MICHAEL: Yes, Your Honor.

5 THE COURT: -- because it's redacted?

6 MS. MICHAEL: Yes.

7 THE COURT: Okay. And then let's get into some more  
8 specifics, and now I'm going to again move to a portion of it  
9 where there's a discussion about the deliberations and the  
10 identifications of somebody. So do you have a physical copy of  
11 it yourself?

12 MS. MICHAEL: I do not, Your Honor. I didn't want to  
13 bring any confidential documents into the courthouse.

14 THE COURT: On a page -- on a page with a Bates number  
15 of 73790, there is minutes of a meeting in January of 2018, and  
16 there is in pink up at the top the word confidential. But then  
17 in the text, there are some other words that are pinked out.  
18 So do those get left pink, or do they come off under your  
19 request?

20 MS. MICHAEL: Your Honor, we would not be requesting  
21 to alter the minutes as they were given to the committee at  
22 all. The highlights that the committee added for the Court to  
23 assist the Court in identifying the sections we referred to in  
24 our motion --

25 THE COURT: No, this isn't the yellow mark.

1 MS. MICHAEL: Yeah. Those, we would remove.

2 THE COURT: This, again, I'm going to hold it up so  
3 you so you can see it. Great big words. Redacted. So you  
4 don't want to remove redacted.

5 MS. MICHAEL: No.

6 THE COURT: But down here, there's something that's  
7 pink. One word, which I can't even read, but I think it says  
8 confidential, but I don't know what it says. Does the pink say  
9 uncovered or come off?

10 MS. MICHAEL: Yes, the committee would not be altering  
11 the minutes at all from the format in which the archdiocese  
12 produced them to us.

13 THE COURT: Did the Archdiocese produce them to you  
14 with the little pink marks?

15 MS. GREENWOOD: Yes.

16 MS. MICHAEL: Yes.

17 THE COURT: Are you sure?

18 MS. GREENWOOD: Yes.

19 MS. MICHAEL: Yes.

20 THE COURT: Okay. I mean, I'm just going to look and  
21 see if I see some more. There is a page with a great big word  
22 confidential that has a date that's highlighted in yellow. Is  
23 that highlighted in yellow because it's marked or because  
24 somebody wanted me to see it? Why is it highlighted in yellow?

25 MS. MICHAEL: Your Honor, I think that at this stage

1 what would be most helpful is to focus. The committee added  
2 some highlighting to assist the Court. We would remove that  
3 highlighting. Otherwise, the only change we are asking to be  
4 made to these documents is to remove the confidential marker on  
5 them. Otherwise, we are not asking to change the documents  
6 from the format.

7 THE COURT: Why would the committee see fit to use  
8 yellow marking for a date to help me, as if that's relevant?

9 MS. MICHAEL: Your Honor, I -- oh, sorry.

10 THE COURT: It's the date years ago.

11 MS. MICHAEL: Your Honor, I don't know for certain  
12 that it -- when we received those documents, they had some  
13 highlighting in them. And so some of that highlighting may be  
14 from the original documents.

15 THE COURT: There's another page, Bates 73816, that's  
16 has the word redacted, but it's got a yellow Post-it. Now, is  
17 it double-redacted? What in the world am I supposed to make of  
18 this yellow mark, which I believe is -- I don't know if it's a  
19 Post-it. I don't know why I have it, but why is there a yellow  
20 mark on a page that has the word redacted covering all the text  
21 on the page?

22 MS. MICHAEL: Your Honor, if the committee receives  
23 the relief that it's seeking, which is to have the  
24 confidentiality removed from these documents, we would take  
25 that opportunity to work with the archdiocese to see if there

1 are color highlighting that needs to needs to be removed from  
2 those documents as well.

3 THE COURT: Ms. Cottrell, could you offer any  
4 suggestion on why a page would have a yellow Post-it --

5 MS. COTTRELL: Your Honor, the committee applied it to  
6 their filing.

7 THE COURT: -- with the word redacted? Pardon?

8 MS. COTTRELL: The committee applied it to their  
9 filing. It's not in the original.

10 THE COURT: But why is it there? I mean, I mean, this  
11 is my frustration. I don't know what I'm being asked to  
12 release or not. You made it clear that you want me to take off  
13 the footer.

14 MS. MICHAEL: Yes. Your Honor, if the committee's  
15 motion is granted, we would need the archdiocese to reproduce  
16 the document to us without that footer. It is a footer --

17 THE COURT: I'm also going to reference another page  
18 that not only has a date highlighted, but it has some -- right  
19 below the word redacted, it has three lines that are  
20 highlighted in yellow.

21 MS. MICHAEL: Your Honor --

22 THE COURT: I don't know what I'm -- I don't know  
23 where we are on this.

24 MS. MICHAEL: Okay. If it helps --

25 THE COURT: I don't want any more notes. Thank you.

1 MS. MICHAEL: I want to be clear that if the  
2 committee's relief is granted, then the archdiocese would  
3 reproduce this document without the confidential marker Bates  
4 stamp on the pages. And what would be made public would be  
5 purely that document that the committee receives from the  
6 archdiocese.

7 THE COURT: Okay.

8 MS. MICHAEL: If any of these markers were things we  
9 inadvertently added to the document, those would not be  
10 included.

11 THE COURT: Last question. Ms. Cottrell, do you have  
12 a comment on the suggestion that the committee would be willing  
13 to give the claimants an opportunity to themselves ask that  
14 their data be excluded? Do you have any comment on -- I  
15 realize you want me to deny the request across the board. But  
16 if I were to grant it, do you have any opinion or position of  
17 the diocese on the suggestion that I made that Ms. Michael said  
18 the committee could live with?

19 MS. COTTRELL: Yes, Your Honor. The debtor's position  
20 would be that it would have to be an opt-in. There are so many  
21 promises on the docket and in these orders of the strictest  
22 confidentiality, including the forms that they filed, that in  
23 order to ensure that someone waives those rights and is  
24 agreeing to the process, you would need an opt-in, not a  
25 silence is deemed consent.

1 THE COURT: Okay. But a recipient of the letter or  
2 the recipient's counsel, I'm not going to interfere with the  
3 attorney-client relationship, if I were to order that, the  
4 committee would undertake to deliver to the claimants, are you  
5 willing to permit this data to be released? And if the vast  
6 majority affirmatively said yes, then that would at least  
7 satisfy that element? I realize you remain opposed to any of  
8 it, but at least you don't have a problem with that approach?

9 MS. COTTRELL: If it's an opt-in, I agree that you  
10 solve the Court's very first question in this hearing as it  
11 relates to this motion, which is how do we deal with the  
12 claimants, their rights as with regard to their individual  
13 information?

14 THE COURT: Right. Right. I understand.

15 MS. COTTRELL: I think the Court would -- we would  
16 respectfully request that the Court reconsider the form of this  
17 exhibit A and consider what's included and the harm versus the  
18 purpose of it. Again, I think Your Honor's heard this, but I'd  
19 ask again, I have not heard any bankruptcy purpose --

20 THE COURT: No, I understand.

21 MS. COTTRELL: -- for the exhibit A being published.

22 THE COURT: No, you and your cocounsel both have made  
23 that. And I understand that's an argument that's made in the  
24 papers and the question I have to decide that. And if I accept  
25 your argument, then the motion will be denied across the board.



1 And we're done. If I don't accept your argument and believe  
2 that some disclosure of some aspects of exhibits A and/or B,  
3 then obviously, it's different.

4 All right. I appreciate the time and effort, and I  
5 understand the difficulty of it. I appreciate the two of you  
6 standing up and answering these questions. Sometimes, I could  
7 see a little impatience with my questions. And you're entitled  
8 to them, that impatience. And I appreciate your responses,  
9 both of you.

10 And I think I want to say to the representatives of  
11 the diocese and to the claimants that both sides have been ably  
12 represented by able counsel. I appreciate their efforts.

13 I'm going to take the matter under advisement in its  
14 entirety. I'm not sure what I'm going to do. I'm going to  
15 give it further thought based upon everything we discussed  
16 today.

17 And I also want, again, for people, not lawyers,  
18 not -- who wish they weren't here for all the various reasons,  
19 I'm going to make sure that yellow highlighting on one document  
20 or not another document or Post-its aren't going to drive the  
21 outcome here. I'm going to make my best decision and my best  
22 judgment on the right result here, based upon the applicable  
23 law. And if there is a need to restate and revisit --  
24 reengineer -- no, that's the wrong word -- reproduce documents  
25 that don't have this confusion about highlighting, I assure

1 you, I'm not colorblind, but some aspects of what I was  
2 reading, I certainly assume that they were perhaps not what  
3 they were. And I'll make sure we're clear on that no matter  
4 what.

5 So regardless of regardless of anything else, if I  
6 grant even any portion of your request, I'm going to make sure  
7 we're clear on all of these aspects. And if I deny it,  
8 obviously, it will be because I believe that the law requires  
9 an outcome contrary to what you want. But it won't be based  
10 upon somebody's yellow highlighter on a piece of paper that I'm  
11 looking at.

12 So I'm going to conclude the hearing, but I'm going to  
13 go back to what I discussed with Mr. Pascuzzi and just suggest  
14 a status hearing roughly four months out on a -- and we've sort  
15 of stuck with Thursday afternoons.

16 So Ms. Parada, can you tell me an available -- where  
17 did she go? She's gone.

18 I will issue an order. But you can anticipate roughly  
19 four months on a Thursday afternoon a status conference. If  
20 the committee chooses or if the diocese chooses to make a  
21 motion of some sort that needs to be heard and would be heard  
22 around that time, I'll just do what I've done in so many cases.  
23 I'll move the status conference to the date that that motion is  
24 coming up.

25 So Ms. Michael, if you don't -- if you don't file a

1 motion that you said you're going to file until some other  
2 date, don't worry about it. You have one motion on file that  
3 that's on track, unless there's a request to continue it. And  
4 we'll leave it at that.

5 So Mr. Pascuzzi, do you want to revisit anything else?

6 MR. PASCUZZI: No, I was just going to remind you of  
7 that.

8 THE COURT: Yeah. Well, okay. So for those of you --  
9 again, I'm not sure what we're doing. Roughly four weeks from  
10 now, I'll -- four months from now. Excuse me. Four months  
11 from now, I'll anticipate having a status conference. But  
12 based upon what Ms. Michael said, I have a sneaking suspicion  
13 that we'll be seeing each other more often and more recently,  
14 more sooner than four months from now.

15 So thank you very much for coming. For being here.  
16 Hopefully, it's not pouring rain, and you can go home. And  
17 well, court's adjourned.

18 MS. MICHAEL: Thank you, Your Honor.

19 (Whereupon these proceedings were concluded at 3:39 PM)  
20  
21  
22  
23  
24  
25

## I N D E X

## RULINGS:

PAGE LINE

Committee is authorized to employ Cushman &  
Wakefield

17 5

## C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.



---

/s/ RIVER WOLFE, CDLT-265

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Date: March 18, 2025

A				
	68:5;80:17	27:2	27:14	anomaly (1)
	<b>actions (4)</b>	<b>affirmative (1)</b>	<b>allegations (8)</b>	46:14
	25:4;26:5;56:10;	39:16	44:3;60:17,19;	<b>answered (2)</b>
	82:9	<b>affirmatively (4)</b>	61:10,20;67:21;	67:10,15
<b>ability (2)</b>	<b>active (5)</b>	33:25,25;38:24;	69:12,14	<b>Anthracite (2)</b>
56:7,11	44:11,11,23;45:1,4	92:6	<b>alleged (3)</b>	77:13;78:1
<b>able (4)</b>	<b>actual (3)</b>	<b>afternoon (7)</b>	61:1;67:12;70:17	<b>anticipate (3)</b>
12:23,24;34:18;	7:2;48:11;54:1	4:6,13;5:1,2,16,24;	<b>allegedly (1)</b>	22:8;94:18;95:11
93:12	<b>actually (4)</b>	94:19	26:5	<b>anticipated (1)</b>
<b>ably (1)</b>	38:20;59:14;69:23;	<b>afternoons (1)</b>	<b>alleges (1)</b>	6:15
93:11	75:7	94:15	35:8	<b>apologize (3)</b>
<b>above (2)</b>	<b>add (8)</b>	<b>Again (33)</b>	<b>alleging (1)</b>	52:3;57:6;58:21
14:2,3	9:11,12;18:24;	6:1,9;17:21;18:5,	36:21	<b>appeals (1)</b>
<b>absent (2)</b>	27:11;41:24;49:1;	16:21;12;25:18;	<b>allow (2)</b>	45:2
10:10;72:2	50:1;80:22	26:23;30:13,17;31:3,	12:22;84:8	<b>appear (2)</b>
<b>absolutely (3)</b>	<b>added (3)</b>	14:32;11;35:13,16;	<b>allowed (8)</b>	4:21;7:1
21:22;22:3;53:2	87:22;89:1;91:9	37:14;47:23;52:21;	12:10,10;45:15;	<b>appearances (3)</b>
<b>abuse (9)</b>	<b>addition (2)</b>	69:4;73:21;74:15;	46:20,21,24;52:19;	4:11,21,25
28:20;35:8,12;	5:9;63:13	75:4;78:22;79:18;	60:23	<b>appearing (2)</b>
36:21,22;40:12;41:3;	<b>additional (3)</b>	80:12;81:7;84:4;87:8;	<b>allowing (2)</b>	5:17,25
60:17;74:8	15:6;41:20;78:9	88:2;92:18,19;93:17;	12:18;65:25	<b>appears (2)</b>
<b>abused (6)</b>	<b>Additionally (2)</b>	95:9	<b>almost (4)</b>	7:2;61:22
35:22;36:10;37:1,4,	26:3;84:18	<b>against (3)</b>	14:17;33:18;42:16;	<b>applicable (1)</b>
7:60;19	<b>address (4)</b>	69:15;76:12;82:11	47:13	93:22
<b>academic (1)</b>	18:11;35:7;79:16;	<b>age (10)</b>	<b>alone (1)</b>	<b>application (5)</b>
55:19	82:21	35:15,15,19,23,24;	37:12	5:8,20;7:12;11:21;
<b>accede (1)</b>	<b>addressing (1)</b>	36:21;37:5;67:11,21,	<b>aloud (1)</b>	14:3
6:4	35:4	23	55:24	<b>applied (3)</b>
<b>accept (4)</b>	<b>adhere (1)</b>	<b>agenda (2)</b>	<b>alter (1)</b>	23:17;90:5,8
29:10;66:14;92:24;	6:23	4:12,17	87:21	<b>applies (14)</b>
93:1	<b>adhering (1)</b>	<b>agent (1)</b>	<b>altering (1)</b>	22:15;23:20;25:3;
<b>acceptable (1)</b>	49:3	8:5	88:10	42:10,20;43:3,9,10,
18:4	<b>adjourned (1)</b>	<b>ages (1)</b>	<b>alternative (1)</b>	12:57;10;59:8;77:8,9;
<b>accepting (1)</b>	95:17	35:20	72:1	84:9
67:4	<b>adjudicated (1)</b>	<b>aggregated (1)</b>	<b>alternatives (1)</b>	<b>apply (8)</b>
<b>access (13)</b>	69:6	58:8	72:8	25:15;42:11,24;
9:18;10:3,11;11:23;	<b>adjudication (1)</b>	<b>ago (4)</b>	<b>although (1)</b>	46:3;49:1;59:7;78:4,
15:3,4,8;17:9;18:5;	62:11	10:1,2;22:15;89:10	52:25	13
48:12;59:7;66:16;	<b>admissible (1)</b>	<b>agree (20)</b>	<b>always (1)</b>	<b>appraisal (4)</b>
72:6	80:6	9:15;10:15;18:3;	76:14	15:13;16:6;17:12,
<b>accommodated (1)</b>	<b>admits (1)</b>	33:9;38:11,24;44:20;	<b>Amanda (3)</b>	12
31:4	60:15	45:24;58:10,12;	5:11,12;57:2	<b>appraise (1)</b>
<b>accommodating (1)</b>	<b>advance (1)</b>	61:24;62:1,2,4;68:1,	<b>ambit (1)</b>	15:14
31:3	40:14	14:73;16;76:8;81:21;	83:17	<b>appraiser (4)</b>
<b>accommodations (1)</b>	<b>adversary (2)</b>	92:9	<b>amend (1)</b>	13:10,10,17;15:16
34:22	22:8;68:17	<b>agreed (5)</b>	76:13	<b>appreciate (6)</b>
<b>accordingly (1)</b>	<b>adverse (3)</b>	9:24;29:11;66:5;	<b>Amendment (2)</b>	57:8;80:18;93:4,5,
24:18	12:3;16:22,23	76:5;82:19	63:13;70:5	8,12
<b>accounted (1)</b>	<b>advice (1)</b>	<b>agreeing (3)</b>	<b>Among (1)</b>	<b>approach (2)</b>
72:25	8:7	62:14;63:20;91:24	64:4	7:17;92:8
<b>accused (24)</b>	<b>advise (2)</b>	<b>agreement (3)</b>	<b>amongst (1)</b>	<b>appropriate (1)</b>
67:16;69:2,19,20;	16:15;24:18	12:14,17;50:6	40:24	49:3
70:8,15,25;71:7,8,14;	<b>advisement (2)</b>	<b>agrees (1)</b>	<b>amount (3)</b>	<b>approval (1)</b>
72:3,11,13;73:3,5,6,	30:1;93:13	17:18	17:16,20;28:11	32:22
10,25;74:2,7,11,11,	<b>advisor (2)</b>	<b>ahead (3)</b>	<b>analogous (1)</b>	<b>approve (1)</b>
14:80:15	12:18;13:6	41:7,11;71:8	60:14	17:18
<b>acknowledging (1)</b>	<b>Advisors (1)</b>	<b>aided (1)</b>	<b>analysis (4)</b>	<b>Archbishop (3)</b>
34:12	33:14	19:21	43:16;44:1;47:20,	4:9;5:3,4
<b>across (2)</b>	<b>advisory (1)</b>	<b>air (1)</b>	21	<b>archdiocesan (1)</b>
91:15;92:25	25:22	41:23	<b>and/or (2)</b>	75:21
<b>act (6)</b>	<b>affiliated (1)</b>	<b>albeit (1)</b>	20:14;93:2	<b>archdiocese (37)</b>
13:6;24:18;25:21;	36:24	16:14	<b>announced (2)</b>	15:2,5;19:23;20:10,
27:8;56:1;63:10	<b>affiliates (1)</b>	<b>alert (1)</b>	30:4,4	11,17;21:14;22:5,6,
<b>action (2)</b>				

11,12;23:15;26:4; 27:2;37:17;42:2; 49:11;50:25;52:10; 20:54;8,11;56:9,11; 74:15;80:8;83:1,13; 84:7;85:16;86:5; 88:11,13;89:25; 90:15;91:2,6 <b>archdiocese's (1)</b> 23:19 <b>area (2)</b> 28:23,24 <b>arguably (1)</b> 43:13 <b>argued (1)</b> 45:5 <b>arguing (2)</b> 5:19,20 <b>argument (15)</b> 7:21;21:13;30:13, 17:31;25;34:8;35:3; 41:12;44:12;56:3,22; 75:15;92:23,25;93:1 <b>arguments (4)</b> 6:6;29:22,24;53:21 <b>around (2)</b> 36:22;94:22 <b>aspects (3)</b> 93:2;94:1,7 <b>assaulted (1)</b> 60:20 <b>assembled (1)</b> 32:14 <b>assess (1)</b> 83:20 <b>assist (2)</b> 87:23;89:2 <b>assistance (2)</b> 61:9;78:15 <b>assume (3)</b> 38:25;40:6;94:2 <b>assuming (1)</b> 38:6 <b>assure (2)</b> 16:2;93:25 <b>attachment (1)</b> 57:23 <b>attachments (1)</b> 60:11 <b>attempt (1)</b> 49:12 <b>attending (1)</b> 6:12 <b>attention (2)</b> 53:12;54:20 <b>attorney-client (2)</b> 54:13;92:3 <b>attributed (1)</b> 48:5 <b>authority (2)</b> 50:5;83:11 <b>authorize (3)</b> 13:6;50:4;65:14	<b>authorized (2)</b> 6:14;17:5 <b>automatic (2)</b> 23:20;25:10 <b>autonomy (1)</b> 63:8 <b>available (13)</b> 5:21;6:9,10,16; 11:13;15:20;17:8,13; 34:24;55:15;56:12; 86:19;94:16 <b>avoid (1)</b> 21:7 <b>aware (1)</b> 20:5 <b>away (1)</b> 72:22  <b>B</b>  <b>Bach (1)</b> 5:21 <b>back (16)</b> 12:5;14:17;25:15; 27:3;30:25;35:10; 36:10;53:16;54:2; 59:10;74:22;75:12, 14:81;6,22;94:13 <b>balance (2)</b> 34:8;77:10 <b>bankruptcies (1)</b> 18:23 <b>Bankruptcy (28)</b> 7:15;16:11,20,20; 20:14;23:2;25:5,8,11; 37:17;42:7;45:14; 48:11;63:14,23,24; 64:5;69:16;75:21; 77:19;78:2,3;79:19, 20,23,23;83:23;92:19 <b>bar (3)</b> 58:14;64:7;75:11 <b>Barry (1)</b> 5:9 <b>based (8)</b> 48:17;59:13;73:3; 80:5;93:15,22;94:9; 95:12 <b>basis (2)</b> 49:14;50:23 <b>Bates (4)</b> 86:22;87:14;89:15; 91:3 <b>Bay (1)</b> 28:20 <b>becomes (2)</b> 6:17;14:15 <b>becoming (1)</b> 33:8 <b>begin (1)</b> 11:11 <b>beginning (7)</b> 13:23;20:22;39:18;	59:21;60:5;72:2;82:7 <b>behalf (2)</b> 5:25;19:1 <b>behind (1)</b> 38:2 <b>believes (2)</b> 17:16;72:4 <b>bellwether (2)</b> 21:25,25 <b>below (1)</b> 90:19 <b>bench (1)</b> 53:2 <b>beneficiaries (1)</b> 75:15 <b>beneficiary (1)</b> 68:8 <b>benefit (3)</b> 17:15;66:3;72:5 <b>best (4)</b> 28:4;52:6;93:21,21 <b>beyond (2)</b> 48:3;83:17 <b>big (4)</b> 14:4;18:5;88:3,21 <b>binder (1)</b> 86:3 <b>binding (1)</b> 64:6 <b>Birth (1)</b> 22:1 <b>Blackacre (2)</b> 10:17;17:12 <b>Blackacre's (1)</b> 12:6 <b>Blank (1)</b> 5:10 <b>board (10)</b> 32:16;55:14;61:5,6; 62:16;83:6;86:8,11; 91:15;92:25 <b>body (3)</b> 61:7,10;62:22 <b>borrow (1)</b> 7:15 <b>both (16)</b> 7:24;9:16,22;11:18, 19:16;16:21;4;28:3; 30:10;34:21;37:5; 43:9;46:6;92:22;93:9, 11 <b>bottom (1)</b> 86:21 <b>bound (1)</b> 45:24 <b>BR (1)</b> 78:1 <b>breaking (1)</b> 35:14 <b>brief (12)</b> 27:8;31:20,23; 49:19;53:18;54:25; 55:4,21;69:24;70:24;	75:4;78:6 <b>briefing (1)</b> 35:3 <b>briefs (2)</b> 4:19;24:11 <b>bring (5)</b> 19:21,24;49:12; 52:4;87:13 <b>Brittany (2)</b> 5:19;18:25 <b>broad (3)</b> 16:14;33:21,22 <b>broke (1)</b> 40:5 <b>buckets (1)</b> 84:5 <b>Buffalo (1)</b> 28:22 <b>bunch (1)</b> 29:20 <b>burden (3)</b> 42:2;85:6,9 <b>business (1)</b> 42:25 <b>bylaws (1)</b> 86:6  <b>C</b>  <b>cabinet (1)</b> 58:4 <b>calculated (1)</b> 80:6 <b>calendar (2)</b> 4:13;29:18 <b>CALIFORNIA (7)</b> 4:1;23:10,14;28:23; 40:3;80:5,15 <b>Call (9)</b> 4:3;6:5;25:12; 29:23;32:5,10;53:8; 62:7;65:23 <b>Calling (1)</b> 4:8 <b>can (35)</b> 8:10;9:16;16:2; 18:16;19:24;24:19; 25:9,21;31:4;35:14; 44:23;53:16;58:12; 61:11,12;65:2;66:16, 20;67:1;71:5,18;72:8, 24;73:5;74:3;77:1,2, 5;79:9;80:25;81:24; 88:3;94:16,18;95:16 <b>canon (1)</b> 61:3 <b>cap (3)</b> 9:22;11:11;17:14 <b>capital (2)</b> 78:11,11 <b>care (1)</b> 12:8 <b>carefully (1)</b>	32:1 <b>Carney (1)</b> 5:6 <b>case (50)</b> 4:14,16;18:22;19:4; 21:25;22:14,15; 23:16,16,17;24:12; 25:8;26:1,21;27:15, 25;28:18;32:12; 33:18;39:18;40:2,6, 21,23,24,25;42:6,7, 17,17,19;45:19,20; 48:11;57:12;58:15; 63:23,24;75:20;76:3; 77:9,13,20,25;78:2; 82:12,21;84:10,14; 85:15 <b>cases (23)</b> 20:12,25;21:2,5,15, 15,16,18;22:1;23:9, 14;26:23;28:13; 37:17;40:20;49:14; 70:16;77:12;80:1,7; 82:10,15;94:22 <b>categories (1)</b> 77:15 <b>category (2)</b> 16:14;17:21 <b>Catholic (6)</b> 4:8;5:3;28:24; 37:16,18;83:1 <b>caught (1)</b> 24:23 <b>cause (5)</b> 40:14;85:2,5,10,13 <b>cell (1)</b> 86:11 <b>cemeteries (1)</b> 10:5 <b>central (1)</b> 42:6 <b>certain (4)</b> 4:19;19:5;35:9; 89:11 <b>certainly (7)</b> 6:24;14:19;45:20; 48:3;68:12;81:2;94:2 <b>cetera (1)</b> 33:15 <b>change (2)</b> 89:3,5 <b>changed (1)</b> 6:22 <b>Chatterjee (6)</b> 22:13,20;23:2,13, 21;25:2 <b>check (1)</b> 15:16 <b>checks (1)</b> 40:21 <b>Chemicals (1)</b> 22:2 <b>child (2)</b>
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60:17,20 <b>children (1)</b> 72:3 <b>choose (1)</b> 34:7 <b>chooses (2)</b> 94:20,20 <b>choosing (1)</b> 71:14 <b>chores (1)</b> 16:16 <b>chose (3)</b> 62:16,22,23 <b>church (17)</b> 33:7;36:7,8;38:17; 39:6;61:2,3,4,12,15, 16:63;8:66;21:83;9, 12,16,22 <b>churches (1)</b> 39:7 <b>church's (1)</b> 63:7 <b>circle (1)</b> 24:23 <b>Circuit (21)</b> 23:17;25:9;43:17; 44:13;45:4,8,16,25; 46:1,5,7,20;47:7,10; 57:12;59:12,21; 60:17,21;81:2;85:12 <b>Circuit's (4)</b> 43:3;46:20;48:17; 58:6 <b>circular (1)</b> 24:18 <b>circumstances (2)</b> 23:18;36:22 <b>cite (3)</b> 82:7,25;83:7 <b>cited (3)</b> 23:16;77:12;78:5 <b>cites (1)</b> 78:3 <b>citing (2)</b> 77:25;79:23 <b>claim (22)</b> 32:14,23;33:6; 40:22,24;43:14; 57:15;58:8,10;64:4,7, 8;66:14,16,18,24,25; 67:1,2;69:20;70:16; 76:12 <b>claimants (16)</b> 21:21;32:3,4;39:11; 40:3,4,16;42:4;67:6; 68:3;70:17;76:16; 91:13;92:4,12;93:11 <b>claims (24)</b> 39:3;40:22,24,25; 42:2,3,5,15;43:12; 58:18;60:6,10;65:2,3, 4,6;66:8,11;68:4; 69:7;72:5;73:23;75:9;	76:6 <b>clarification (1)</b> 76:21 <b>clarify (4)</b> 26:8;30:23;55:20; 77:2 <b>clarifying (1)</b> 52:24 <b>class (1)</b> 37:12 <b>classmates (1)</b> 37:20 <b>clawed (1)</b> 81:6 <b>clear (15)</b> 4:12;21:15;39:19; 44:6;49:16;50:9; 55:12;56:5;57:11,12; 58:6;90:12;91:1;94:3, 7 <b>clearest (1)</b> 48:16 <b>clearly (1)</b> 85:21 <b>clergy (2)</b> 23:14;60:19 <b>CLERK (2)</b> 4:4,8 <b>client (2)</b> 27:24;65:15 <b>clinic's (1)</b> 83:10 <b>close (2)</b> 12:2,2 <b>closed (1)</b> 63:24 <b>closing (2)</b> 56:3;84:3 <b>cocounsel (1)</b> 92:22 <b>Code (3)</b> 7:16;16:11;63:23 <b>codefendants (4)</b> 22:15;23:20;25:4; 26:5 <b>codes (1)</b> 35:14 <b>Code's (1)</b> 69:16 <b>coincidence (1)</b> 36:25 <b>collaborative (1)</b> 12:1 <b>colleague (1)</b> 5:19 <b>colleagues (1)</b> 23:1 <b>collecting (1)</b> 11:3 <b>color (1)</b> 90:1 <b>colorblind (1)</b> 94:1	<b>comfort (1)</b> 76:20 <b>comfortable (1)</b> 39:21 <b>coming (8)</b> 11:3;15:5;20:5; 22:25;29:21;30:7; 94:24;95:15 <b>comment (4)</b> 6:16;78:9;91:12,14 <b>commentary (1)</b> 6:13 <b>commissioned (1)</b> 17:11 <b>commit (1)</b> 17:20 <b>committee (91)</b> 4:14,18,23;5:12,18; 6:20;8:7,24;9:19; 10:1,5;12:6;13:23; 14:8,14;15:17;16:11, 18;17:5,8,15;19:1,2,4, 16;20:21,24;26:16; 27:17;29:10;30:6,12; 31:8;32:13,15;34:12, 17,19;40:6;41:7;42:1; 48:24;49:1;50:1,10; 51:15;52:19;53:13, 14;54:6;55:13;56:5,6, 7,8;58:8;60:15;62:5; 65:19;66:4,17;67:18; 68:3;70:24;71:10,10, 12;72:4;74:6;77:12; 78:3;80:24;81:10; 82:16;85:22,23,25; 86:15;87:21,22; 88:10;89:1,7,22;90:5, 8;91:5,12,18;92:4; 94:20 <b>committee's (12)</b> 11:13;14:6;26:19; 38:7;53:20;54:4; 55:14;62:19;70:5; 76:19;90:14;91:2 <b>common (3)</b> 43:2;47:14;59:4 <b>communication (2)</b> 40:5;83:9 <b>communications (1)</b> 18:21 <b>community (2)</b> 34:14;37:16 <b>company (1)</b> 14:19 <b>compel (5)</b> 69:18;72:1,8;82:10, 15 <b>competing (2)</b> 7:25;8:2 <b>compile (1)</b> 12:22 <b>compiled (1)</b> 35:10	<b>complain (1)</b> 65:21 <b>complete (1)</b> 32:22 <b>completely (1)</b> 42:16 <b>complied (1)</b> 83:16 <b>comprised (1)</b> 61:7 <b>concede (2)</b> 50:1;71:24 <b>conceded (2)</b> 55:13;81:15 <b>conceding (1)</b> 49:23 <b>concept (1)</b> 16:19 <b>concern (3)</b> 13:16;32:17;35:5 <b>concerned (4)</b> 20:21;29:14;32:1,2 <b>concerning (2)</b> 83:2,3 <b>concerns (2)</b> 35:17;76:22 <b>conclude (2)</b> 47:23;94:12 <b>concluded (1)</b> 95:19 <b>conclusion (1)</b> 29:25 <b>concurrent (1)</b> 20:15 <b>conduct (4)</b> 4:16;33:1;48:3,5 <b>conference (10)</b> 4:15;5:8;18:10; 22:25;27:13;29:17; 30:6;94:19,23;95:11 <b>conferrals (1)</b> 82:19 <b>confidential (27)</b> 32:20;48:10;50:23; 52:8;55:7;56:6;61:7; 65:3,9;66:6;75:10,11; 76:6;78:10,15,16; 81:11;82:20;86:4,22, 23;87:13,16;88:8,22; 89:4;91:3 <b>confidentiality (11)</b> 33:17;50:11;65:10; 66:2;68:21;75:15,23; 76:13;85:24;89:24; 91:22 <b>confirm (1)</b> 53:6 <b>confirmed (1)</b> 20:11 <b>conflict (10)</b> 7:22,22,23;8:1,8,10, 15,21;14:18;17:3 <b>confused (2)</b>	44:20;53:15 <b>confusing (1)</b> 55:23 <b>confusion (5)</b> 23:8;57:6;81:8; 85:21;93:25 <b>connection (2)</b> 60:5;65:5 <b>consensual (6)</b> 19:6;20:12,13;21:9, 10;49:14 <b>consent (5)</b> 39:16;65:15,23; 76:16;91:25 <b>consider (2)</b> 74:13;92:17 <b>considered (1)</b> 76:3 <b>considering (2)</b> 60:14;82:22 <b>consistent (7)</b> 6:9;33:16,16;62:24; 63:1,3;66:18 <b>consultant (1)</b> 4:22 <b>contact (1)</b> 15:10 <b>contain (1)</b> 83:8 <b>contemplated (1)</b> 65:8 <b>contempt (3)</b> 25:14,15;64:18 <b>contested (1)</b> 65:6 <b>context (1)</b> 79:18 <b>continue (5)</b> 19:20;74:23;85:10, 14;95:3 <b>continued (1)</b> 20:15 <b>continues (1)</b> 34:22 <b>contrary (1)</b> 94:9 <b>control (2)</b> 22:2;42:18 <b>controlling (4)</b> 58:14;64:9;76:12; 78:20 <b>controls (7)</b> 42:18;46:11;58:11, 13,22;59:6;82:1 <b>controversy (1)</b> 8:19 <b>convenient (1)</b> 31:14 <b>conversation (1)</b> 37:10 <b>conversations (1)</b> 37:15 <b>cooperate (1)</b>
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15:23 <b>cooperating (1)</b> 17:9 <b>cooperative (3)</b> 15:1,22;26:24 <b>cooperatively (1)</b> 26:18 <b>copy (2)</b> 86:2;87:10 <b>Cordileone (1)</b> 5:5 <b>correctly (4)</b> 25:10;32:2;38:1; 76:22 <b>correspondence (2)</b> 71:11,11 <b>costs (1)</b> 26:4 <b>Cottrell (101)</b> 5:11,12;56:24;57:2, 2,4,8,16,20,22;58:11, 13,18,20,24;59:2,4,6, 12,17,20,25;60:2,4,8, 24;61:15,19,24;62:1, 3,5,10,20;63:1,8,10, 12,19;64:1,3,17,20, 23,25;65:17;66:1; 67:10,24;68:2,7,14, 16,24;69:5,23;70:10; 71:3,5,9,16,20,23; 73:16,18,20,22;74:1, 9,15,18,25;75:9,13, 19,25;76:2,11;77:5,8, 21,24;78:1,6,24;79:1, 4;80:21,23;81:14,18; 82:6,24;90:3,5,8; 91:11,19;92:9,15,21 <b>Cottrell's (1)</b> 79:19 <b>counsel (23)</b> 4:21;5:6,8,10,15; 6:3,6,14;23:2,24,16, 25;30:11;39:20;40:8; 41:22;58:8;67:18; 70:25;71:12;81:15; 84:18;92:2;93:12 <b>counsels (1)</b> 23:4 <b>count (2)</b> 34:18;70:18 <b>counted (3)</b> 66:20,21,22 <b>counter-statements (1)</b> 24:25 <b>country (1)</b> 28:13 <b>County (1)</b> 28:21 <b>couple (1)</b> 86:6 <b>course (4)</b> 29:2;38:10,10; 75:18	<b>Court (388)</b> 4:3,4,6,10,16,19; 5:5,14,22,23;6:1,9,15; 7:3,7,11,15,18;8:1,4, 7,13,23;9:2,6,13,24; 10:15,21,24;11:10; 12:2,5,14,17,25;13:3, 5,6,19;14:5;15:7,13; 16:2,9;18:3,14,16; 19:7,10,12,14,22,22, 24,25;20:3,5,7,9,14, 19;21:1,3,6,12,17,19, 23;22:4,12,14,16,22; 23:1,1,4,6,7,11,21,24, 24;24:1,1,3,5,8,10,14; 25:5,7,7,9,11,13,14, 18,21,24;26:11,15; 27:5,7,23;29:19; 30:10,19,21,25;31:2, 11,14,17,21,23;32:22; 34:6,22,22;35:1,13, 23;36:1,3,5,7,19;37:3, 18;38:3,8,10,17,23; 39:6,10,23;40:1,14; 41:1,6,10,13,19;42:1, 8,14;43:6,8,15,20; 44:9,21,23;45:1,2,14; 46:9,12,14,17,23; 47:2,5,12,23;48:15, 20,23;49:6,8,12,15, 17,18;50:8,13,16,21, 23;51:3,6,8,10,12,16, 19,22;52:13,16,18,23; 53:15,18,20,23,25; 54:9,14,17,24;55:2,5, 8,11,17;56:9,10,14, 18,20,25;57:3,5,14, 15,18,21;58:4,9,12, 16,19,22,25;59:3,5, 10,16,17,19,23;60:1, 3,7,21,22;61:2,14,17, 21,25;62:2,4,9,14,21; 63:3,9,11,17,25;64:2, 5,11,15,18,21,24,25; 65:13,19;66:13;67:3, 9,13,14,17,20,23; 68:1,3,6,9,12,15,16, 21,23;69:4,21,22; 70:11,16;71:4,6,15, 19,21;72:8,9,12;73:4, 17,19,21,24;74:3,13, 17,22;75:3,12,14,24; 76:1,4,8,14,18;77:7, 13,19,20,22,25;78:3, 5,17,22,25;79:3,5,13, 22;80:1,3,4,10,12,13, 17,18,21;81:7,15; 82:5,7,23;83:2,7,8,18, 19,21;84:2,14,17,22, 25;85:3,19;86:2,10, 18,23;87:1,5,7,14,22, 23,25;88:2,6,13,17, 20;89:2,7,10,15;90:3,	7,10,17,22,25;91:7, 11;92:1,14,15,16,20, 22;95:8 <b>courthouse (1)</b> 87:13 <b>courtroom (7)</b> 30:3;31:1;34:13,18, 19;52:5;79:18 <b>courts (5)</b> 63:19;75:21;82:8,9; 85:1 <b>Court's (12)</b> 22:9;58:14;59:14; 63:16;64:7;65:11; 67:4;78:14;82:22; 83:17;92:10;95:17 <b>coverage (1)</b> 65:7 <b>covering (1)</b> 89:20 <b>crafted (1)</b> 37:21 <b>create (3)</b> 8:10;73:10;74:25 <b>created (3)</b> 69:19,20;72:10 <b>creature (1)</b> 63:7 <b>credible (1)</b> 71:7 <b>credibly (14)</b> 69:18;70:7,25;71:8, 14;72:3,13;73:3,6,9, 25;74:2,7,14 <b>creditor (1)</b> 68:5 <b>creditors (2)</b> 4:17;5:18 <b>creditors' (1)</b> 4:23 <b>criticized (2)</b> 28:6;69:24 <b>cross-examination (1)</b> 7:8 <b>Cruz (3)</b> 22:14,19;23:16 <b>current (1)</b> 68:11 <b>currently (7)</b> 35:21;40:20;49:5; 55:7;57:17;72:19; 81:19 <b>Cushman (30)</b> 5:7,21;6:20;8:4,24; 9:2,15;10:3,7,9,16; 11:2,9;12:5,18;13:6, 20;14:13,19;15:8; 16:3,21,24;17:5,9,10, 13,15,19;18:4 <b>Cushman's (4)</b> 8:7;9:23;10:6; 17:15	<b>D</b> <b>damages (7)</b> 21:4;47:1,9,22; 59:18;60:6,9 <b>damaging (2)</b> 69:2,5 <b>data (19)</b> 11:3,24;12:22;33:3; 35:11;37:21;38:2; 39:2;42:2,3,12;43:12; 58:18;65:24;67:1; 72:5;77:11,91:14; 92:5 <b>date (11)</b> 30:5;58:14;64:7; 67:12;75:11;88:22; 89:8,10,90:18;94:23; 95:2 <b>dates (2)</b> 35:11;37:22 <b>day (1)</b> 38:12 <b>days (1)</b> 27:4 <b>dead (1)</b> 73:1 <b>deadlines (1)</b> 29:10 <b>deal (7)</b> 6:17;14:4;18:6; 28:16;29:12;85:21; 92:11 <b>dealing (3)</b> 5:7;23:18;73:4 <b>debate (2)</b> 14:12;17:19 <b>debtor (34)</b> 6:24;8:17;9:2,15, 18,21,25;10:3,8;14:9, 14;17:8,17,18,20; 19:4;22:7;26:18; 29:10;31:8;41:10; 56:2;57:2;67:8,20,23; 68:2,8;69:18,24,25; 71:13;75:22;76:4 <b>debtor's (10)</b> 6:3;9:24;18:10; 41:22;63:21;70:4,5,7; 76:7;91:19 <b>decide (2)</b> 17:21;92:24 <b>decided (3)</b> 13:6;76:9,9 <b>decision (15)</b> 6:4;19:15;30:4,5; 44:24;45:16;47:11; 48:17;55:12;60:1; 83:4,11;84:8,23; 93:21 <b>decisional (1)</b> 57:11	<b>declined (2)</b> 10:8,12 <b>de-designate (1)</b> 68:18 <b>deemed (2)</b> 48:4;91:25 <b>deems (1)</b> 78:17 <b>defamatory (2)</b> 59:1,8 <b>defects (1)</b> 64:4 <b>defendant (1)</b> 83:15 <b>defense (1)</b> 26:4 <b>defenses (1)</b> 65:5 <b>defer (1)</b> 22:25 <b>defies (1)</b> 47:14 <b>define (2)</b> 78:15,16 <b>defined (2)</b> 59:12;65:1 <b>defines (1)</b> 78:10 <b>definition (5)</b> 46:15;59:14;69:14, 16;73:12 <b>definitions (1)</b> 59:15 <b>definitively (1)</b> 60:18 <b>deliberation (1)</b> 61:15 <b>deliberations (3)</b> 61:18;63:6;87:9 <b>deliberative (2)</b> 61:7;62:21 <b>deliver (1)</b> 92:4 <b>demands (1)</b> 71:12 <b>demarcation (1)</b> 50:11 <b>denied (2)</b> 47:1;92:25 <b>Dennis (1)</b> 4:5 <b>deny (4)</b> 55:18;83:25;91:15; 94:7 <b>depend (1)</b> 11:6 <b>depending (1)</b> 46:3 <b>deposition (2)</b> 60:12;68:19 <b>depth (1)</b> 42:5 <b>depublish (1)</b>
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62:22 <b>derived (1)</b> 43:13 <b>describe (1)</b> 19:19 <b>described (6)</b> 4:19;14:16;20:21; 21:14;30:23;43:2 <b>describes (1)</b> 59:21 <b>description (1)</b> 20:17 <b>despite (1)</b> 65:10 <b>detail (1)</b> 59:21 <b>determination (4)</b> 25:6;63:2,4,4 <b>determine (6)</b> 13:7;14:20;16:4; 25:2;73:5;83:21 <b>determining (1)</b> 85:13 <b>devices (1)</b> 22:2 <b>devolved (1)</b> 65:11 <b>dictate (1)</b> 58:17 <b>dictionary (1)</b> 59:14 <b>differed (1)</b> 24:14 <b>different (18)</b> 8:20;15:17;19:3; 27:15;29:6;32:3;37:1, 15:40;21:42;24:24; 45:22;46:3;54:3;58:6; 81:18;84:5;93:3 <b>differently (1)</b> 29:4 <b>difficult (2)</b> 45:18;47:13 <b>difficulty (1)</b> 93:5 <b>dig (1)</b> 15:18 <b>digits (1)</b> 41:3 <b>diocesan (2)</b> 20:12;49:14 <b>diocese (31)</b> 8:5;11:11;15:8,18; 17:1,11;23:9;28:25; 29:1;32:16;38:12; 42:17;48:8;49:1,21; 65:13,21,24;66:15; 70:14,14,15;72:17,18; 73:3,9;74:13;82:11; 91:17;93:11;94:20 <b>dioceses (4)</b> 18:22;26:18,23; 75:21	<b>direct (4)</b> 10:4;17:17;53:11; 67:5 <b>directly (1)</b> 39:22 <b>directs (1)</b> 67:7 <b>disagree (3)</b> 21:11;22:5;62:12 <b>disagreement (1)</b> 18:6 <b>disappointed (1)</b> 33:8 <b>discipline (1)</b> 62:22 <b>disclose (6)</b> 56:8;60:25;65:14; 77:1,14;80:15 <b>discloses (2)</b> 61:17,19 <b>disclosure (11)</b> 9:23;36:13;48:8; 55:22;58:1;60:23; 65:23;72:5;78:19; 85:9;93:2 <b>discoverable (2)</b> 10:21;73:19 <b>discovery (26)</b> 15:21;26:17,24,25; 27:1,4;43:1,24;44:7, 19;46:8;47:9,20;58:4; 73:7,7,11,22;75:2; 78:11,17,19;84:13,16; 85:11,14 <b>discovery-related (1)</b> 26:20 <b>discretion (2)</b> 77:14;78:4 <b>discuss (2)</b> 39:19;54:21 <b>discussed (3)</b> 55:6;93:15;94:13 <b>discussing (1)</b> 36:16 <b>discussion (6)</b> 13:23;14:18;41:23; 43:21;44:6;87:9 <b>disinterested (2)</b> 7:2;16:19 <b>disinterestedness (2)</b> 7:4,11 <b>disparately (1)</b> 29:5 <b>dispute (2)</b> 14:25;17:19 <b>disputes (1)</b> 67:4 <b>disqualifier (1)</b> 8:16 <b>disregard (1)</b> 83:18 <b>disseminate (2)</b> 50:17;81:12	<b>distance (2)</b> 67:22;69:1 <b>distillation (1)</b> 32:13 <b>distilled (1)</b> 32:4 <b>distinction (3)</b> 47:8;58:2;84:15 <b>distinguishable (1)</b> 45:25 <b>distinguishes (2)</b> 57:12;83:4 <b>District (5)</b> 23:17;24:1;29:6; 76:5;78:2 <b>divisions (1)</b> 22:7 <b>doable (2)</b> 38:15;39:8 <b>docket (3)</b> 64:22;79:4;91:21 <b>doctor (1)</b> 83:10 <b>doctors (1)</b> 83:5 <b>doctrine (3)</b> 80:5;81:1,2 <b>doctrines (1)</b> 48:25 <b>document (18)</b> 12:11;40:17;44:19; 45:10,11;48:12; 60:18;70:3,20;81:12, 17;82:1;90:16;91:3,5, 9;93:19,20 <b>documents (39)</b> 10:6;42:20,25;43:5; 44:2,7,45:12;46:8; 47:9,20,21,25;48:19; 51:5;52:2,4,5,19; 55:7;57:13,25;58:3; 60:12;84:5,9,12,16; 85:8,23,24;86:16; 87:13;89:4,5,12,14, 24;90:2;93:24 <b>dollars (3)</b> 10:18;13:25;14:10 <b>done (6)</b> 15:13;36:12;49:14; 74:23;93:1;94:22 <b>door (1)</b> 12:3 <b>double-redacted (1)</b> 89:17 <b>down (6)</b> 15:1;29:18;40:5; 47:24;48:23;88:6 <b>dozen (1)</b> 75:20 <b>dozens (1)</b> 37:11 <b>draft (1)</b> 38:20	<b>drafted (3)</b> 66:10,10,15 <b>draw (3)</b> 35:15,18;54:20 <b>drive (1)</b> 93:20 <b>driven (1)</b> 76:7 <b>Drugs (1)</b> 22:1 <b>dual (2)</b> 7:24;8:10 <b>duplicate (1)</b> 30:7 <b>during (2)</b> 43:1;84:16	83:10 <b>employ (5)</b> 6:20;8:17;11:9; 12:18;17:5 <b>employing (1)</b> 10:9 <b>employment (5)</b> 4:22;5:20;7:1,21; 16:21 <b>end (1)</b> 82:14 <b>ends (1)</b> 83:14 <b>engage (2)</b> 4:14;11:17 <b>engaged (2)</b> 73:20,22 <b>engineered (1)</b> 75:7 <b>English (1)</b> 46:2 <b>enough (1)</b> 18:9 <b>ensure (1)</b> 91:23 <b>entailed (1)</b> 59:18 <b>entered (3)</b> 66:2;78:18;84:19 <b>entire (2)</b> 11:5;68:22 <b>entirety (2)</b> 84:1;93:14 <b>entitled (2)</b> 82:17;93:7 <b>entity (1)</b> 63:6 <b>entry (1)</b> 66:5 <b>equity (1)</b> 63:22 <b>essentially (1)</b> 46:7 <b>establishing (1)</b> 85:10 <b>estate (8)</b> 4:15,22;6:21;10:9; 13:17;16:1,14;76:12 <b>estimate (1)</b> 13:25 <b>estimation (1)</b> 60:10 <b>Et (1)</b> 33:15 <b>evaluate (1)</b> 12:23 <b>evaluating (1)</b> 11:18 <b>evaluation (2)</b> 8:18;82:13 <b>even (10)</b> 8:15;29:3;44:17; 45:4;46:12,14;48:1;
<b>E</b>				
<b>earlier (3)</b> 59:17;69:17;82:3 <b>Earplugs (1)</b> 22:2 <b>easily (1)</b> 35:14 <b>East (1)</b> 28:20 <b>easy (4)</b> 14:9;18:8;31:4; 39:5 <b>ecclesiastical (1)</b> 61:3 <b>edited (1)</b> 74:9 <b>educate (1)</b> 22:22 <b>effect (2)</b> 19:25;64:6 <b>efficient (2)</b> 11:25;13:16 <b>effort (3)</b> 30:7;39:12;93:4 <b>efforts (2)</b> 19:21;93:12 <b>eighteen- (1)</b> 28:9 <b>either (7)</b> 18:21;29:9;30:3; 33:25;49:24;52:11; 74:5 <b>electronic (1)</b> 70:19 <b>element (2)</b> 7:12;92:7 <b>else (9)</b> 6:14;8:19;14:9; 41:7,24;72:23;73:2; 94:5;95:5 <b>elsewhere (1)</b> 31:6 <b>emphasize (2)</b> 42:1;77:6 <b>emphasizes (1)</b>				

73:10;88:7;94:6 <b>event (4)</b> 29:23;30:22;33:12; 67:12 <b>everybody (2)</b> 73:8,25 <b>everyone (3)</b> 4:6;31:15;73:13 <b>evidence (4)</b> 26:6;60:9,9;80:6 <b>evidentiary (1)</b> 68:19 <b>Exactly (2)</b> 63:8;85:22 <b>examined (1)</b> 10:16 <b>example (4)</b> 8:4,11;12:5;17:11 <b>except (3)</b> 6:13;24:10,20 <b>exception (4)</b> 59:8;77:8,10,18 <b>exceptions (2)</b> 59:7;78:4 <b>excerpts (2)</b> 54:1;60:12 <b>excessive (1)</b> 17:19 <b>exchange (2)</b> 10:5;11:12 <b>excluded (2)</b> 34:1;91:14 <b>exclusive (1)</b> 20:16 <b>exclusivity (1)</b> 29:12 <b>excuse (4)</b> 70:15;76:22;77:25; 95:10 <b>exhibit (59)</b> 32:5,9,10,13,15,18, 25;33:8;36:9,17,18; 37:6,21;38:4,20; 39:12;40:11,23; 42:14,15;47:24,25; 50:17;51:12;52:17; 53:10;54:1,6,7,19,20, 23;55:13;56:1,7,8,12, 12,16;57:17;58:7; 61:22;62:19;66:7,10, 17;67:19;68:24;71:6; 72:10;80:25;81:4,9, 24;85:23;86:1,3; 92:17,21 <b>exhibits (3)</b> 71:10;72:9;93:2 <b>exist (1)</b> 8:23 <b>existing (1)</b> 24:12 <b>exists (5)</b> 49:24;70:9,22,23; 73:10	<b>exonerates (1)</b> 61:21 <b>expect (2)</b> 21:23;27:3 <b>expectation (1)</b> 30:1 <b>expense (1)</b> 38:17 <b>experience (4)</b> 13:9;26:18;28:2; 35:6 <b>experiencing (1)</b> 34:23 <b>expert (6)</b> 6:21;10:10,13,19, 22;15:3 <b>expertise (2)</b> 79:19,23 <b>experts (1)</b> 15:17 <b>expert's (1)</b> 16:1 <b>explain (1)</b> 84:7 <b>explaining (1)</b> 28:7 <b>extensive (2)</b> 73:20,22 <b>extensively (1)</b> 30:14 <b>extent (1)</b> 76:11 <b>extracted (4)</b> 32:22;58:9;65:24; 66:17	66:19 <b>fate (1)</b> 56:16 <b>Father (32)</b> 42:17,25;43:2,11, 23;44:2,5,18,20,20, 21,23;46:6;47:18; 57:11;58:1;69:13; 77:11,16,21,22;78:18; 83:3,12;84:7,7,11,14, 19,20,23;85:17 <b>Fathers (1)</b> 44:10 <b>feasible (1)</b> 6:8 <b>feel (2)</b> 39:21;41:19 <b>fees (4)</b> 9:23;13:22;26:20, 21 <b>felt (1)</b> 12:23 <b>few (9)</b> 19:19;20:13;22:8, 14,25;29:18;35:15; 53:10;54:3 <b>fiction (1)</b> 75:16 <b>fifteen (2)</b> 31:20,21 <b>figure (3)</b> 14:16;33:18;75:3 <b>file (10)</b> 18:10;32:15;33:6; 46:22,24;57:24; 60:24;94:25;95:1,2 <b>filed (28)</b> 11:21;19:3,23; 20:10;23:15,19; 37:18;46:17;47:25; 52:5;53:3;54:5;57:13, 17,19,20;58:1,4,5; 59:22;60:13;68:20; 71:9;75:10;78:7; 81:19;85:23;91:22 <b>files (7)</b> 44:6;60:12;61:1; 82:16;84:8,11,12 <b>filing (5)</b> 22:8;24:25;58:3; 90:6,9 <b>final (4)</b> 12:21;71:20,23; 80:23 <b>finally (2)</b> 26:16;82:6 <b>find (9)</b> 8:13,13;27:16,21; 29:3;45:18;46:15; 86:3,4 <b>finding (1)</b> 85:2 <b>fine (2)</b>	12:7;16:6 <b>finished (1)</b> 86:19 <b>fire (2)</b> 40:3,3 <b>firm (1)</b> 73:14 <b>first (14)</b> 4:21;7:9;14:6; 17:18;21:17;35:7; 43:4;63:13;70:5,12; 72:21;83:2;86:5; 92:10 <b>fit (2)</b> 73:12;89:7 <b>fits (3)</b> 69:13;77:15;78:17 <b>five (3)</b> 29:8;39:3;60:10 <b>five- (1)</b> 28:13 <b>flagging (1)</b> 63:14 <b>flux (1)</b> 11:5 <b>focus (9)</b> 30:15;31:24;33:5; 62:7;63:19;66:7;67:7; 84:5;89:1 <b>focused (7)</b> 44:11;49:24;59:13; 63:15;66:4;67:18; 82:4 <b>Fogerty (2)</b> 23:16,18 <b>folks (2)</b> 24:20;74:10 <b>follow (4)</b> 46:2;47:12,13; 60:21 <b>following (2)</b> 6:2;32:1 <b>footer (3)</b> 90:13,16,16 <b>footnote (1)</b> 82:7 <b>forcing (1)</b> 70:24 <b>form (5)</b> 50:18,20;64:8;65:4; 92:16 <b>format (2)</b> 88:11;89:6 <b>former (3)</b> 23:22;61:8,9 <b>forms (2)</b> 64:8;91:22 <b>forth (1)</b> 17:13 <b>forward (3)</b> 21:2,17;22:7 <b>found (2)</b> 43:20;75:21	<b>four (6)</b> 94:14,19;95:9,10, 10,14 <b>Fr (1)</b> 5:5 <b>framing (2)</b> 33:22;34:3 <b>FRANCISCO (4)</b> 4:1,9;5:3;29:5 <b>free (7)</b> 34:6,6;41:19;43:23; 46:16;50:17;81:12 <b>friend (4)</b> 37:4,8,10,11 <b>Friends (1)</b> 33:14 <b>front (9)</b> 20:2;23:2,13;25:3; 26:7;27:3;28:7;48:19; 52:4 <b>frustration (1)</b> 90:11 <b>fully (2)</b> 34:7;41:24 <b>fundamentally (1)</b> 27:15 <b>further (6)</b> 9:11;18:24;26:22; 27:11;80:22;93:15 <b>furtherance (1)</b> 56:13 <b>future (1)</b> 12:3
<b>G</b>				
	<b>face (1)</b> 33:9 <b>facility (2)</b> 8:5;10:17 <b>fact (10)</b> 28:12;48:9;49:19, 22,23;54:1;56:25; 62:15;68:10;73:3 <b>facts (1)</b> 26:10 <b>faculties (1)</b> 61:12 <b>fails (1)</b> 20:12 <b>fair (1)</b> 69:22 <b>falls (1)</b> 17:21 <b>familiar (3)</b> 4:11;16:20;32:12 <b>family (1)</b> 33:14 <b>far (2)</b> 11:6;29:14 <b>fast (1)</b>			<b>Gail (1)</b> 5:16 <b>game (2)</b> 43:23;46:16 <b>Gaspari (13)</b> 5:9;74:20;77:5; 78:9;79:11,11,13,15, 25;80:4,11,14,20 <b>gather (1)</b> 13:4 <b>gathering (1)</b> 13:14 <b>gave (6)</b> 13:25;39:15;71:4; 75:16,17;86:3 <b>general (2)</b> 5:6;68:4 <b>generally (3)</b> 7:5;8:9;85:2 <b>gentleman (2)</b> 77:3;79:9 <b>gets (2)</b> 39:23;64:12 <b>given (2)</b> 68:10;87:21 <b>gives (1)</b> 13:10

<b>giving (1)</b> 56:15 <b>glad (1)</b> 55:23 <b>global (1)</b> 13:15 <b>goal (1)</b> 13:15 <b>goes (5)</b> 14:17;25:13;39:1; 60:16;85:12 <b>Good (18)</b> 4:6;5:1,2,16,24; 16:6;18:9;28:2;37:8, 10,11;62:17;71:17; 85:2,5,10,13,21 <b>governed (2)</b> 46:17;61:3 <b>grammar (1)</b> 28:25 <b>grammatical (1)</b> 60:4 <b>grant (4)</b> 50:16;55:19;91:16; 94:6 <b>granted (2)</b> 90:15;91:2 <b>grateful (1)</b> 35:5 <b>great (4)</b> 14:1;16:3;88:3,21 <b>GREENWOOD (23)</b> 5:16,17;9:15,17,21, 25;10:19,22;11:2; 14:5,24;15:10,20; 17:6,24;18:1,11,13, 15;53:6;54:19;88:15, 18 <b>groping (1)</b> 8:14 <b>groups (1)</b> 35:16 <b>guess (3)</b> 38:18;40:8;52:6 <b>guidance (5)</b> 21:3,10;22:9;26:2; 48:16 <b>gun (2)</b> 20:9;29:9	28:20;36:12;64:16 <b>happening (4)</b> 22:11;28:7;37:2; 53:17 <b>happens (4)</b> 16:12;22:1;36:24; 64:15 <b>happy (2)</b> 15:4;40:4 <b>hard (4)</b> 20:16;48:3;70:12; 72:13 <b>harder (1)</b> 53:4 <b>harm (12)</b> 44:4;45:6,7;48:9; 66:7;67:8;68:8,23,24, 25;69:12;92:17 <b>harmed (4)</b> 65:14,15,24;67:7 <b>harms (1)</b> 67:20 <b>haystack (2)</b> 37:24;38:1 <b>hazardous (1)</b> 16:5 <b>head (2)</b> 7:14;8:11 <b>heading (2)</b> 55:21;86:7 <b>hear (8)</b> 6:22;9:14;27:12; 29:22,24;34:25; 40:19;58:20 <b>heard (11)</b> 6:14;9:19;21:24; 23:16;27:17;56:16; 76:4;92:18,19;94:21, 21 <b>hearing (13)</b> 4:14;6:4;29:25; 30:24,25;34:25; 55:11;65:11;68:18; 76:10;92:10;94:12,14 <b>hearings (3)</b> 6:2,11;34:23 <b>help (2)</b> 21:8;89:8 <b>helpful (1)</b> 89:1 <b>helps (2)</b> 40:23;90:24 <b>here's (2)</b> 14:21;15:10 <b>hesitated (1)</b> 43:25 <b>hidden (1)</b> 42:3 <b>high (2)</b> 13:20;69:9 <b>higher (1)</b> 12:9 <b>highlight (1)</b>	51:4 <b>highlighted (14)</b> 51:3,25;52:6;53:3, 7,11,23;54:6,18; 88:22,23,24;90:18,20 <b>highlighter (1)</b> 94:10 <b>highlighting (8)</b> 51:15;89:2,3,13,13; 90:1;93:19,25 <b>highlights (4)</b> 51:13;54:22,24; 87:22 <b>highly (1)</b> 40:2 <b>hire (5)</b> 8:18;12:24;13:17; 15:14;16:12 <b>Historically (1)</b> 72:16 <b>history (3)</b> 15:19;49:10,24 <b>Hmm (1)</b> 58:19 <b>hold (8)</b> 36:1;51:23;57:5; 64:18;84:22,22;87:2; 88:2 <b>holds (1)</b> 60:18 <b>home (1)</b> 95:16 <b>homes (1)</b> 39:22 <b>honed (1)</b> 57:10 <b>Honor (116)</b> 5:2,4,16,24;6:25; 7:5,10,13,17,23;8:3,6, 9;9:1,4,12,21;11:15; 12:21;13:2,16,22; 14:24;16:8;18:1,2,15, 25;19:2;22:3;23:25; 24:22;25:17,23;26:7; 27:3,6,12;29:16;30:9, 18,20;31:10,16,19,22; 34:5,11,21;35:2;38:5; 39:4,9;40:13,19;41:5, 11,17,25;42:23; 43:25;48:14;49:4; 50:15,19;52:3;53:6; 56:4,17,24;57:8,10; 60:25;61:24;62:1; 63:12;64:9,17,23; 66:1;67:10,25;68:4; 69:3,17;70:10;71:25; 74:9,20,25;77:6;78:8; 79:11,15;80:20,23; 81:19;82:6,14,25; 83:14,25;84:4;86:15; 87:4,12,20;88:25; 89:9,11,22;90:5,14, 21;91:19;95:18	<b>Honorable (1)</b> 4:5 <b>Honor's (1)</b> 92:18 <b>Hopefully (1)</b> 95:16 <b>house (2)</b> 15:14,16 <b>Huh (1)</b> 55:2 <b>hundred (4)</b> 30:2;32:7;39:10; 42:16 <b>hurt (3)</b> 32:9;33:8;65:15 <b>hybrid (2)</b> 6:6;31:5 <b>hypothetical (5)</b> 32:24;36:3;67:15; 74:5;78:12	<b>inappropriate (1)</b> 9:8 <b>inappropriateness (1)</b> 9:9 <b>incidents (1)</b> 66:21 <b>include (6)</b> 20:25;35:11;37:22; 40:11;71:10;78:16 <b>included (4)</b> 54:7;60:11;91:10; 92:17 <b>includes (1)</b> 60:19 <b>including (5)</b> 21:3;42:4;44:3; 60:12;91:22 <b>inconsistent (2)</b> 71:1;81:25 <b>incorporate (1)</b> 78:19 <b>incorrect (1)</b> 26:9 <b>incorrectly (2)</b> 25:11;26:4 <b>in-court (1)</b> 6:3 <b>increase (1)</b> 17:16 <b>incredibly (1)</b> 34:14 <b>independent (3)</b> 11:23;61:10;86:5 <b>independently (2)</b> 11:18;13:5 <b>indiscernible (1)</b> 27:22 <b>individual (10)</b> 35:8,10;45:10; 61:22;62:17,23; 72:14;80:7;82:12; 92:12 <b>individually (1)</b> 40:18 <b>individuals (3)</b> 34:15;39:1;69:6 <b>individuals' (1)</b> 39:20 <b>inferences (2)</b> 35:15,19 <b>inform (2)</b> 68:2,3 <b>information (38)</b> 10:3,11;11:13,24; 13:4,14;14:8;15:3,5; 17:7;26:19;32:4,13, 21;36:21;43:9;64:4; 65:3,9;66:6,18;67:14; 68:25;75:10;76:5,6; 77:14,15;78:11,15,16; 81:3;82:21;83:24; 84:6,9;86:7;92:13 <b>informs (1)</b>	
<b>H</b>			<b>I</b>		
<b>half (3)</b> 12:8;28:1;34:19 <b>hand (2)</b> 8:24;26:19 <b>handling (1)</b> 5:12 <b>happen (9)</b> 13:11;28:4;29:9; 36:7,8;37:19,19; 46:21;65:25 <b>happened (3)</b>			<b>idea (2)</b> 35:7;67:5 <b>identifications (1)</b> 87:10 <b>identified (6)</b> 21:17;48:2;56:25; 62:5;66:23;67:17 <b>identify (5)</b> 38:1;67:21;69:1,9; 79:10 <b>identifying (1)</b> 87:23 <b>identity (1)</b> 33:21 <b>idly (1)</b> 28:17 <b>ignore (1)</b> 64:6 <b>immediate (1)</b> 28:23 <b>immune (2)</b> 25:13;85:16 <b>impact (1)</b> 26:5 <b>impacted (1)</b> 32:3 <b>impatience (2)</b> 93:7,8 <b>importance (1)</b> 42:6 <b>important (3)</b> 34:14;41:23,23 <b>impose (1)</b> 41:21 <b>impossible (1)</b> 35:20 <b>improper (1)</b> 83:19 <b>inadvertently (1)</b> 91:9		



42:3 <b>inherently (1)</b> 17:2 <b>initial (4)</b> 11:7;13:25;31:19; 49:13 <b>initialed (1)</b> 54:12 <b>initials (2)</b> 52:11;54:15 <b>injury (1)</b> 82:10 <b>input (1)</b> 39:3 <b>insignificant (1)</b> 68:10 <b>insist (1)</b> 56:14 <b>insofar (1)</b> 61:6 <b>instance (3)</b> 8:12;41:2;76:2 <b>instances (2)</b> 20:15;33:2 <b>instead (1)</b> 27:18 <b>instructs (1)</b> 47:18 <b>insurance (3)</b> 5:10;26:5,7 <b>insurance/reinsurance (1)</b> 65:7 <b>insurers (1)</b> 21:4 <b>intend (6)</b> 6:13;10:22;19:20; 29:7,8;34:11 <b>intends (2)</b> 20:24;30:25 <b>intention (1)</b> 18:19 <b>interaction (1)</b> 6:12 <b>interest (5)</b> 14:24;16:22;45:6; 77:10,17 <b>interested (1)</b> 11:3 <b>interesting (1)</b> 83:4 <b>interests (2)</b> 7:25;8:2 <b>interfere (1)</b> 92:2 <b>internal (8)</b> 61:2,5,6,13;63:6; 83:9,16,22 <b>interpret (7)</b> 21:19;25:9,10,11; 43:17;46:1,6 <b>interpretation (6)</b> 46:2,3;66:11;67:3; 84:7,10	<b>interpreted (1)</b> 45:16 <b>interrogating (1)</b> 18:20 <b>interrogatory (5)</b> 74:6;78:13,14; 79:17,21 <b>interrupt (1)</b> 66:13 <b>intervene (1)</b> 74:20 <b>Intervened (1)</b> 64:1 <b>into (18)</b> 6:5;14:12,23,25; 15:11,25;17:21; 20:22;21:12;32:5,5; 33:17;52:5;65:11; 78:19;84:19;87:7,13 <b>investigation (2)</b> 60:16;62:11 <b>invite (1)</b> 15:22 <b>involved (4)</b> 28:5;38:19;44:13; 61:9 <b>IRB (22)</b> 42:3,25;43:10; 47:21;49:2;50:1,11; 51:4;57:16;60:15,15; 62:11,13,15;71:14,22; 72:6;80:25;83:20; 84:12;85:17,22 <b>ironic (1)</b> 13:20 <b>irrelevant (2)</b> 28:16;77:18 <b>issue (17)</b> 9:5;12:3;13:13; 26:1,6;29:12;49:11; 63:12,20;64:10; 67:17;74:19;77:19; 82:3,4;83:15;94:18 <b>issues (16)</b> 19:5,22;20:24;21:4, 10;22:9;27:2,4;36:16; 54:3;63:13;65:7;72:1; 75:22;76:3;82:22 <b>issue's (1)</b> 34:14 <b>item (1)</b> 4:17 <b>items (1)</b> 53:10	<b>job (1)</b> 23:6 <b>joint (1)</b> 11:16 <b>Jones (2)</b> 5:17;19:1 <b>Jose (1)</b> 29:2 <b>Judge (25)</b> 22:13,14,20,23; 23:2,13,21,22,23,24; 24:10,19;25:2,14; 28:4,5,6,7,8;31:5; 36:13;45:14,14; 47:12;76:2 <b>judges (8)</b> 18:22;23:7,11; 24:17;25:8,9;31:6; 61:9 <b>judge's (1)</b> 28:2 <b>judgment (3)</b> 20:25;21:2;93:22 <b>judicial (2)</b> 77:17;83:24 <b>jumping (2)</b> 20:9;29:9 <b>jurisdiction (1)</b> 63:16	86:4 <b>lack (1)</b> 82:20 <b>lacked (1)</b> 75:22 <b>Lafferty (2)</b> 31:6;76:2 <b>land (1)</b> 19:14 <b>language (1)</b> 46:2 <b>largely (1)</b> 82:15 <b>larger (1)</b> 40:2 <b>last (4)</b> 17:11;57:9;62:3; 91:11 <b>lastly (1)</b> 85:20 <b>laundry (3)</b> 30:6;33:1;40:11 <b>law (16)</b> 24:9,15;25:1;42:17, 19;43:2;59:4;60:21; 61:3,4;73:14;75:20; 77:9;80:15;93:23; 94:8 <b>lawsuit (2)</b> 74:12;75:10 <b>lawyer (5)</b> 25:13;28:3,6;66:15; 73:2 <b>lawyering (1)</b> 38:19 <b>lawyers (10)</b> 16:20;25:7,8;32:11; 33:15;40:4;66:9,10, 15;93:17 <b>lawyers' (2)</b> 58:3;66:10 <b>lay (1)</b> 53:16 <b>lead (2)</b> 30:13;80:6 <b>leased (1)</b> 8:5 <b>leasing (3)</b> 8:4;16:15,25 <b>least (15)</b> 14:10;17:2;23:9; 26:23;29:11;33:6; 38:14;41:4,16;52:13; 56:15;62:17;87:1; 92:6,8 <b>leave (10)</b> 5:22;18:6;30:3; 32:10;52:24;56:4; 62:16,17;76:15;95:4 <b>left (6)</b> 72:22,24,24;73:1; 86:12;87:18 <b>lends (1)</b>	7:8 <b>lessor/lessee (1)</b> 17:2 <b>letter (4)</b> 71:20,23;74:12; 92:1 <b>letterhead (1)</b> 83:10 <b>liability (1)</b> 21:4 <b>liaison (1)</b> 24:25 <b>license (1)</b> 64:5 <b>lieu (1)</b> 72:7 <b>life (1)</b> 28:3 <b>light (1)</b> 38:12 <b>limitations (1)</b> 81:10 <b>limited (3)</b> 61:6;74:10;81:23 <b>limits (2)</b> 41:21;57:6 <b>line (3)</b> 26:12,14;36:16 <b>lines (2)</b> 41:2;90:19 <b>Lisiecki (1)</b> 83:1 <b>L-I-S-I-E-C-K-I (1)</b> 83:2 <b>Lisiecki's (1)</b> 83:13 <b>list (53)</b> 27:17;30:6;33:1; 36:18,23;39:7;40:11, 11;41:1;49:21,22,24; 69:2,5,8,18,20,21; 70:8,9,18,19,21,22,23, 24;71:6,7,8,13,13,17; 72:3,10,12,20,25; 73:5,8,10,11,13,24; 74:1,3,8,25;75:5,5,6, 8;76:17;82:7 <b>listen (4)</b> 31:25;34:8;55:8; 56:2 <b>literally (1)</b> 45:17 <b>litigate (1)</b> 69:7 <b>litigated (3)</b> 80:1,9,11 <b>litigation (8)</b> 12:20;14:12,15; 20:14,15;22:19; 27:18;73:4 <b>little (5)</b> 15:7;53:3,15;88:14; 93:7
	<b>K</b>	<b>Katz (1)</b> 5:11 <b>keep (13)</b> 15:25;27:19,20; 29:7;31:19;42:2;43:5; 44:2;48:20;55:18; 79:6,6;85:17 <b>kept (2)</b> 56:22;66:6 <b>kind (3)</b> 11:16;15:21;77:1 <b>kinds (1)</b> 75:22 <b>knee (1)</b> 8:14 <b>knew (1)</b> 80:8 <b>knowing (4)</b> 37:16,17;78:18; 84:19 <b>knowledge (1)</b> 14:20 <b>known (1)</b> 40:2 <b>knows (7)</b> 36:23;67:23;70:14, 16;72:17,18;73:4		
	<b>J</b>	<b>January (4)</b> 71:11,12,23;87:15 <b>JCCP (4)</b> 22:12,21;23:13,19 <b>jerk (1)</b> 8:14	<b>L</b>	
		<b>label (1)</b>		

<b>live (3)</b> 6:3;36:7;91:18	26:20;92:6	62:16;63:17;71:4; 73:2;74:11,23;75:17, 24;76:1,8;88:20; 90:10,10	24:2,4,7,13,22;25:17, 20,23,25;26:13,16; 27:5,6;29:13;30:17, 18,20,22;31:10,13,16, 19,22;34:5,10;35:2, 18,25;36:2,4,6,15,20; 37:9;38:5,9,16,22; 39:4,9,14,25;40:13, 18;41:5,9,11,17,25; 42:13,23;43:7,10,19, 25;44:18,22,25;45:3; 46:5,10,13,19,24; 47:4,7,17;48:14,16, 22;49:4,7,10,16;50:7, 9,15,19,22,25;51:7,9, 11,13,17,21;52:3,15, 18;53:5,16,19,22,24; 54:2,10,16,18;55:1,3, 6,10,16;56:4,17,19; 57:9;67:5;69:17;84:3, 4,24;85:1,4,20;86:9, 15,21,25;87:4,6,12, 20;88:1,5,10,16,19, 25;89:9,11,22;90:14, 21,24;91:1,8,17; 94:25;95:12,18	68:25
<b>lived (3)</b> 29:5,5;33:19	<b>makes (3)</b> 25:6;44:6;61:11	<b>means (4)</b> 21:24;47:14,18; 81:2	<b>misled (1)</b> 32:19	<b>miss (1)</b> 52:21
<b>local (1)</b> 87:1	<b>making (8)</b> 28:8;30:17;32:9; 47:1;56:4;81:8;83:11; 85:25	<b>meant (3)</b> 15:22,25;51:17	<b>missed (2)</b> 41:12;81:7	<b>mis-signals (1)</b> 23:10
<b>locate (1)</b> 53:1	<b>management (1)</b> 63:7	<b>measures (1)</b> 49:13	<b>misstatement (1)</b> 24:9	<b>mistaken (1)</b> 61:21
<b>location (4)</b> 16:16;33:2;36:5,18	<b>managerial (1)</b> 63:6	<b>measuring (1)</b> 15:12	<b>mixed (1)</b> 44:10	<b>modify (1)</b> 76:14
<b>locations (2)</b> 6:11;33:4	<b>mandate (1)</b> 63:22	<b>media (1)</b> 87:2	<b>moment (4)</b> 6:15;15:9;25:1; 52:25	<b>money (2)</b> 17:20;28:11
<b>long (3)</b> 25:10;27:17;76:10	<b>many (8)</b> 33:2;37:13,15;53:9; 66:8;82:19;91:20; 94:22	<b>mediate (1)</b> 82:21	<b>Montali (1)</b> 4:5	<b>month (1)</b> 28:10
<b>longer (1)</b> 81:4	<b>MARCH (1)</b> 4:1	<b>mediation (12)</b> 11:7;13:14;19:20, 21;20:15,17,21,23; 21:6,8;27:16;86:23	<b>months (8)</b> 20:22;22:8;29:18; 94:14,19;95:10,10,14	<b>more (21)</b> 11:15;15:7;16:1; 19:19;27:12;28:4; 30:14;31:5,14;33:24; 39:6;41:22,23;42:9; 48:20;87:7;88:21; 90:25;95:13,13,14
<b>look (11)</b> 9:6;12:11;13:5; 14:3;35:20;44:23; 51:16,16,19;71:18; 88:20	<b>marked (1)</b> 88:23	<b>mediations (1)</b> 65:8	<b>Mortgages (1)</b> 23:18	<b>most (4)</b> 20:14;21:11;27:24; 89:1
<b>looked (2)</b> 32:21;65:12	<b>marker (3)</b> 52:8;89:4;91:3	<b>mediators (3)</b> 18:21,21,22	<b>might (23)</b> 6:16;8:22,23;13:13, 18,19,19;25:15;28:19, 24;29:4,20;32:19; 33:18,20;37:25;39:7; 48:6;59:17;66:14; 67:3;73:14;74:20	<b>mostly (1)</b> 82:8
<b>looking (9)</b> 10:9;17:22;22:7; 43:4;51:24;55:21; 70:3;75:6;94:11	<b>markers (1)</b> 91:8	<b>medical (5)</b> 82:13;83:3,5,8,9	<b>million (4)</b> 10:17;12:6,8,8	<b>motion (48)</b> 4:17;5:13;21:15; 25:16;28:17;38:7; 49:6,10;50:10;52:7,8; 53:8,11,20;54:4,6,21, 25;55:22;57:23; 60:14,16,25;62:6; 63:13;64:4;65:11; 68:8;70:5;71:9,25; 72:4;73:8;75:2;76:7, 13,19,25;82:15; 83:25;87:24;90:15; 92:11,25;94:21,23; 95:1,2
<b>lost (3)</b> 44:12,12;45:2	<b>marking (1)</b> 89:8	<b>meet (1)</b> 85:16	<b>Milwaukee (2)</b> 28:21;63:23	<b>motions (4)</b> 29:12,20;30:7,12
<b>lot (3)</b> 38:19;39:21;41:14	<b>marks (1)</b> 88:14	<b>meeting (1)</b> 87:15	<b>mind (7)</b> 6:22;29:7;30:16; 31:3;38:4;56:1;86:19	<b>move (4)</b> 21:17;30:22;87:8; 94:23
<b>lots (2)</b> 22:1,2	<b>mass (2)</b> 22:1;40:1	<b>meets (1)</b> 69:13	<b>minds (1)</b> 70:23	<b>M's (1)</b>
<b>loud (1)</b> 24:6	<b>match (2)</b> 35:23,24	<b>Melissa (1)</b> 5:21	<b>minimum (2)</b> 33:23;34:1	
<b>low (2)</b> 12:9;13:21	<b>material (3)</b> 77:9;85:11,14	<b>member (3)</b> 49:2,25;71:21	<b>ministerial (2)</b> 61:2;63:10	
<b>lower (1)</b> 59:14	<b>materials (4)</b> 68:20;78:11,17,20	<b>members (7)</b> 34:12,17;40:7;61:8; 86:8,11;87:3	<b>ministry (3)</b> 44:13;61:12;73:1	
<b>lying (2)</b> 70:13,14	<b>matter (7)</b> 4:8;21:1;39:22; 48:6;61:4;93:13;94:3	<b>members' (1)</b> 86:13	<b>minor (1)</b> 38:17	
<b>M</b>	<b>matters (9)</b> 4:13,19;5:19;19:15, 17,18;30:1;65:6; 75:23	<b>membership (1)</b> 62:16	<b>minute (2)</b> 37:7;74:21	
<b>ma'am (1)</b> 64:12	<b>May (10)</b> 7:17;10:14;19:2; 38:11;39:11;42:18, 18;72:24;76:8;89:13	<b>memo (4)</b> 47:9;48:10;59:18; 60:11	<b>minutes (26)</b> 31:20;32:10,16; 41:15,16;42:3,25; 43:11,22;50:11;51:4; 57:16;60:15,15;61:2; 62:13,15;72:6;80:25; 83:6;84:12;85:17,22; 87:15,21;88:11	
<b>magnitude (2)</b> 40:2,25	<b>maybe (13)</b> 20:7;31:6,23;32:9; 37:7;38:23;49:23; 55:11;65:22;70:1,18; 71:7;77:2	<b>memorandum (2)</b> 59:22;60:8	<b>misleading (1)</b>	
<b>mail (1)</b> 39:21	<b>mean (36)</b> 8:20;9:9,14;12:14; 13:5,12;15:17;17:22; 21:23,23,24;22:1; 24:11,15,16,18;27:8; 29:21;36:10;38:10; 41:14;47:15;48:2;	<b>mention (1)</b> 47:22		
<b>mailing (1)</b> 39:1		<b>mentioned (1)</b> 42:5		
<b>mailings (2)</b> 39:17,20		<b>merits (1)</b> 32:6		
<b>main (2)</b> 29:23;30:22		<b>met (2)</b> 42:2;48:9		
<b>maintain (1)</b> 74:1		<b>Michael (169)</b> 5:19;18:13,14,16, 24,25,25;19:9,11,13, 16;20:1,4,6,8,10,20; 21:8,14,22;22:3,5,18, 24;23:5,12,23,25;		
<b>maintained (1)</b> 49:21				
<b>major (2)</b> 14:25;15:22				
<b>majority (2)</b>				

84:8 <b>much (11)</b> 11:18;13:24;16:1; 28:1;30:21;31:17; 56:20;57:20;82:17; 84:2;95:15 <b>Mullen (1)</b> 5:11 <b>Mullin (1)</b> 57:4 <b>must (4)</b> 39:11;58:17;60:21; 77:19 <b>mutually (1)</b> 20:16 <b>myself (1)</b> 64:18	78:2;82:8;83:1,13 <b>news (1)</b> 10:24 <b>next (6)</b> 22:8;27:4;28:16; 30:24,24;38:25 <b>Ninth (23)</b> 25:9;43:3,17;44:12; 45:3,8,15,25;46:1,5,6, 19,20;47:7,10;48:17; 57:12;58:5;59:12,20; 60:17;81:2;85:12 <b>nobody (2)</b> 15:21;81:21 <b>nobody's (1)</b> 24:10 <b>non (1)</b> 34:2 <b>nonbankruptcy (1)</b> 83:24 <b>none (4)</b> 17:4;48:10;73:10; 79:20 <b>nonissue (3)</b> 16:7,8;50:8 <b>nor (1)</b> 64:18 <b>norms (1)</b> 61:4 <b>Northern (4)</b> 23:10,14;28:23; 40:3 <b>note (2)</b> 20:13;64:9 <b>noted (3)</b> 20:11;25:4;84:18 <b>notes (2)</b> 79:6;90:25 <b>noting (1)</b> 20:20 <b>November (3)</b> 64:10,20,21 <b>number (19)</b> 10:25;12:9;13:10; 29:22;32:25;33:1,3,4, 4;34:17;39:13;40:9; 41:3;66:21,22;70:3; 78:22;79:8;87:14 <b>numbered (1)</b> 72:2 <b>numbers (4)</b> 86:11,11,14;87:3	<b>objectives (1)</b> 63:15 <b>obligation (1)</b> 10:13 <b>observations (1)</b> 66:8 <b>observe (1)</b> 6:11 <b>obstacles (1)</b> 19:6 <b>obvious (1)</b> 27:23 <b>obviously (8)</b> 6:4;12:15;26:6; 39:7;42:22;74:24; 93:3;94:8 <b>occasion (1)</b> 40:1 <b>occurred (3)</b> 20:13;35:9,12 <b>off (15)</b> 7:10,13;8:11;34:15; 39:7;52:9;62:24; 64:11,12;71:22;73:1; 81:10;87:18;88:9; 90:12 <b>offended (1)</b> 32:8 <b>offer (2)</b> 10:1;90:3 <b>offered (1)</b> 11:16 <b>often (3)</b> 26:23;40:19;95:13 <b>older (1)</b> 62:7 <b>once (5)</b> 30:14;37:24;66:2; 77:14;78:4 <b>One (76)</b> 4:10,14;8:13,15,24; 11:17;13:21,21;16:5; 24:18;25:22;27:10; 28:25,25;29:2,5,16; 31:2,24;32:8;33:2,2,5, 6,7,11,12,12,18;35:8, 14,16,21;39:6,6; 40:10,19;41:2,2,3; 43:18;44:10,10,11; 45:1,2,18;46:1;48:20; 49:9,12,18;51:23; 52:13;59:7;61:21; 62:17;63:4;66:19; 67:16,16;69:7,8,9,9, 19;74:6;77:15;78:4,8; 79:18;80:7;82:24; 88:7;93:19;95:2 <b>ones (4)</b> 72:21,22,23;73:6 <b>ongoing (1)</b> 24:9 <b>only (18)</b> 28:25;33:5;41:2;	44:1;47:21;50:9,19; 53:10;60:24;66:2,25; 68:7;70:23;81:23; 83:17;84:14;89:3; 90:18 <b>onto (2)</b> 15:23,23 <b>oOo- (1)</b> 4:2 <b>openers (1)</b> 14:10 <b>opening (2)</b> 34:21;41:20 <b>openness (1)</b> 68:11 <b>operates (1)</b> 24:20 <b>opinion (5)</b> 12:24;14:22;59:22; 83:21;91:16 <b>opinions (1)</b> 25:22 <b>opponents (1)</b> 48:8 <b>opportunity (9)</b> 9:22;33:24;34:1; 38:24;39:15;52:20; 56:16;89:25;91:13 <b>opposed (3)</b> 6:21;81:21;92:7 <b>opposes (1)</b> 6:25 <b>opposing (3)</b> 47:11;84:18;85:9 <b>opposition (5)</b> 4:23;6:23,24;63:21; 70:4 <b>opt (2)</b> 38:24;39:15 <b>opt-in (3)</b> 91:20,24;92:9 <b>option (1)</b> 38:14 <b>optional (1)</b> 43:14 <b>order (44)</b> 4:3,20;18:4;21:3,9; 34:16;35:22;38:1; 49:1;58:2,7,14,14; 64:7,9,21;65:9,11; 66:5;75:11;76:13,14, 16,20;77:19;78:10,13, 18,20,25;79:1,7; 82:20;83:2,7,13; 84:19;85:4,5,8,15; 91:23;92:3;94:18 <b>orders (7)</b> 64:6;82:8,8,10,10, 24;91:21 <b>Oregon (1)</b> 23:17 <b>Ori (1)</b> 5:11	<b>original (3)</b> 51:15;89:14;90:9 <b>originally (1)</b> 9:25 <b>Orleans (1)</b> 28:22 <b>otherwise (3)</b> 61:22;89:3,5 <b>out (36)</b> 14:16;15:14,16,21; 17:25;22:16,18,20; 24:6;27:20;28:12; 32:8;33:18;37:24; 38:1,24;39:1,2,11,15; 40:9,21;53:16;55:9; 62:7;65:1,4;66:25; 67:1;75:4;77:22;78:8; 81:25;82:3;87:17; 94:14 <b>outcome (3)</b> 40:8;93:21;94:9 <b>outcomes (1)</b> 84:15 <b>outline (1)</b> 85:12 <b>outlined (1)</b> 49:10 <b>outside (1)</b> 48:11 <b>outweighed (1)</b> 45:6 <b>over (13)</b> 13:12;18:22;20:22; 24:20;25:6;26:19; 34:19;37:13;80:11, 11,12,16;83:12 <b>overarching (1)</b> 63:12 <b>overlooked (2)</b> 49:23;56:25 <b>override (1)</b> 70:5 <b>overrule (1)</b> 16:9 <b>overruled (1)</b> 38:7 <b>own (4)</b> 13:9;47:11;55:24; 76:15
<b>N</b>				<b>P</b>
<b>name (11)</b> 36:23;37:5;45:11; 52:16;57:1;62:6,7,18; 72:17,24;74:4 <b>named (3)</b> 23:21;52:14;62:18 <b>namely (1)</b> 70:7 <b>names (18)</b> 33:10,10;45:13; 46:25,25;48:1;51:2; 52:11,12,15,21;54:11, 12;69:5;70:20;72:18, 21;74:7 <b>narrow (1)</b> 27:2 <b>near (1)</b> 18:17 <b>necessary (5)</b> 6:18;12:23;29:20; 40:10,15 <b>need (19)</b> 9:13;14:3;15:8; 19:5;20:25;21:2,10; 25:18;27:7;30:14,15; 31:24;32:7;33:13; 64:11;65:16;90:15; 91:24;93:23 <b>needle (3)</b> 37:24,25,25 <b>needs (6)</b> 17:15;33:23;82:2; 90:1,1;94:21 <b>negotiated (1)</b> 66:5 <b>negotiations (3)</b> 49:11;60:5;65:8 <b>neighborhood (2)</b> 33:19;36:8 <b>neither (1)</b> 72:25 <b>new (7)</b> 13:10;28:21,22;	<b>Oakland (5)</b> 24:3;29:1,6;31:6; 76:3 <b>objection (5)</b> 16:10;38:5;39:14; 80:5;82:18 <b>objections (2)</b> 38:6;82:18			<b>Pachulski (2)</b> 5:17;19:1 <b>page (17)</b> 26:13;51:20;64:25; 72:2;77:16,24;86:5,5, 21;87:14,14;88:21; 89:15,20,21;90:4,17 <b>pages (5)</b> 51:22;52:9;53:9; 86:7;91:4 <b>paid (1)</b>

28:12 <b>paper (3)</b> 54:22;70:19;94:10 <b>papers (4)</b> 17:7;53:1;70:8; 92:24 <b>Parada (1)</b> 94:16 <b>paragraph (14)</b> 20:11,22;26:3,11, 13;60:4;64:24;72:2; 78:15,22,24;79:8; 84:20;85:1 <b>paragraphs (1)</b> 51:25 <b>Pardon (4)</b> 61:25;73:21;83:20; 90:7 <b>parish (3)</b> 67:16;69:8,9 <b>parishes (2)</b> 10:4;22:7 <b>parse (1)</b> 57:24 <b>part (5)</b> 35:10;42:19;44:16, 17:83:12 <b>participated (1)</b> 40:7 <b>participating (1)</b> 6:2 <b>particular (7)</b> 16:15;66:22;71:16; 77:17;80:9,17,17 <b>particularized (4)</b> 44:4;45:5,7;48:9 <b>parties (10)</b> 21:3,11;24:17;25:2; 65:2;66:4;78:14,18; 82:21;84:18 <b>parties-in-interest (1)</b> 42:4 <b>parts (2)</b> 28:13;54:5 <b>party (9)</b> 11:3;26:1;43:5; 44:2;68:5;85:5,7,7,9 <b>Pascuzzi (32)</b> 5:1,2,3;9:13;11:10, 15;12:4,13,16,21; 13:1,4,12,22;16:7,8; 17:24;18:2,9;24:14; 27:7,12;29:16;30:9; 42:21;45:23;49:19; 56:21,22;94:13;95:5, 6 <b>passed (1)</b> 72:22 <b>past (1)</b> 80:16 <b>path (1)</b> 15:1 <b>Patrick (1)</b>	5:5 <b>pattern (2)</b> 60:8,16 <b>Paul (3)</b> 5:2,9;79:11 <b>Paula (1)</b> 5:6 <b>pay (3)</b> 11:11;14:10;38:18 <b>paying (2)</b> 11:22;14:9 <b>penalty (1)</b> 66:9 <b>people (14)</b> 6:12;29:3,22;31:3; 33:10,24;37:15;38:3, 14;48:1;61:8;63:18; 73:12;93:17 <b>people's (1)</b> 70:23 <b>percent (3)</b> 30:2;32:7;42:16 <b>perfectly (3)</b> 14:7;49:16;86:10 <b>perhaps (1)</b> 94:2 <b>perjury (1)</b> 66:9 <b>permit (1)</b> 92:5 <b>permitted (1)</b> 65:1 <b>perpetrator (5)</b> 51:2;52:11;54:11; 61:23;80:9 <b>perpetrators (8)</b> 32:25;33:3,10;48:2, 6;54:14;70:15,17 <b>perpetrators' (1)</b> 61:1 <b>persist (1)</b> 23:8 <b>person (16)</b> 15:10;28:24;33:7, 11,13,19,21;36:11,11, 21,23,25,25;52:13; 67:11;71:14 <b>personal (1)</b> 82:9 <b>personally (2)</b> 28:9;73:14 <b>personnel (10)</b> 44:6;46:21,24; 60:11,24;61:1,8;84:8, 11,12 <b>person's (1)</b> 33:14 <b>perspective (2)</b> 26:9;47:18 <b>persuade (1)</b> 32:7 <b>pertains (1)</b> 77:18	<b>Phillip (1)</b> 5:24 <b>philosophy (1)</b> 68:12 <b>phone (4)</b> 64:11;86:11,13; 87:3 <b>physical (1)</b> 87:10 <b>Pick (4)</b> 12:8;36:3;37:23,25 <b>picked (1)</b> 37:25 <b>picture (1)</b> 47:15 <b>piece (2)</b> 70:19;94:10 <b>pile (1)</b> 53:1 <b>pincite (2)</b> 60:2;84:20 <b>pink (5)</b> 87:16,18;88:7,8,14 <b>pinked (1)</b> 87:17 <b>place (2)</b> 33:12;76:16 <b>plaintiff (2)</b> 74:6;82:11 <b>plaintiff's (1)</b> 24:24 <b>plan (4)</b> 21:9,10;28:10; 31:19 <b>planning (1)</b> 31:11 <b>plans (3)</b> 20:11,12,13 <b>pleading (3)</b> 47:1,8;57:23 <b>pleadings (4)</b> 43:13;47:22;84:13, 16 <b>Please (3)</b> 4:6;18:3;64:11 <b>PM (2)</b> 4:1;95:19 <b>point (25)</b> 10:14;11:1,2,20; 17:23;27:13;28:2; 32:6;38:13;39:12; 40:4;42:21;47:24; 48:20;71:6;72:10; 73:17;77:6;78:8; 80:23;81:7,15,18; 82:3,15 <b>pointing (1)</b> 81:25 <b>points (2)</b> 71:25;79:18 <b>police (1)</b> 61:8 <b>policies (2)</b>	26:8;83:16 <b>policy (1)</b> 68:10 <b>portion (3)</b> 53:2;87:8;94:6 <b>portions (12)</b> 4:18;50:13;51:3,14; 52:1,7;53:7,23;54:18, 20,22;55:4 <b>Portland (1)</b> 48:11 <b>position (8)</b> 8:20;9:19;14:6; 17:2;23:19;63:21; 91:16,19 <b>possible (2)</b> 27:17;73:16 <b>post (1)</b> 70:6 <b>postage (1)</b> 38:18 <b>Post-it (3)</b> 89:16,19;90:4 <b>Post-its (1)</b> 93:20 <b>potential (3)</b> 7:23;17:3;45:5 <b>pouring (1)</b> 95:16 <b>practical (1)</b> 11:25 <b>practice (1)</b> 21:20 <b>practices (2)</b> 60:9,17 <b>preamble (1)</b> 76:25 <b>precedence (1)</b> 25:6 <b>preclude (1)</b> 16:21 <b>predicted (1)</b> 29:13 <b>preference (2)</b> 31:9,10 <b>preliminary (1)</b> 56:15 <b>premature (1)</b> 14:11 <b>prepared (3)</b> 15:6;50:4;58:8 <b>pre-petition (1)</b> 73:23 <b>Present (3)</b> 5:5;34:19;67:22 <b>presented (4)</b> 6:6;67:19;76:3; 83:14 <b>presiding (2)</b> 4:5;18:22 <b>presume (1)</b> 33:20 <b>presumption (1)</b>	58:25 <b>pretend (1)</b> 35:13 <b>pretty (1)</b> 11:17 <b>preview (1)</b> 24:11 <b>previous (1)</b> 64:6 <b>previously (2)</b> 21:17;65:1 <b>priest (15)</b> 44:9,10;45:4,8; 60:19,23;62:6;66:22; 71:17;72:17,18,25; 73:8;74:7;82:11 <b>priesthood (1)</b> 72:22 <b>priests (8)</b> 60:11;61:11;69:11, 15;70:8,25;71:7; 72:13 <b>priests' (1)</b> 82:12 <b>primary (2)</b> 4:17;13:16 <b>principally (1)</b> 82:10 <b>principle (1)</b> 79:24 <b>prior (1)</b> 28:3 <b>private (3)</b> 43:5;44:3;58:17 <b>privilege (13)</b> 8:23;9:3,5;10:15, 18;12:20,20;13:8; 14:12,16;20:18; 54:13;86:24 <b>probably (1)</b> 15:25 <b>problem (7)</b> 11:10;14:5;17:22; 31:5;79:15;81:5;92:8 <b>problems (2)</b> 17:22;28:21 <b>procedurally (1)</b> 24:5 <b>procedure (1)</b> 38:6 <b>procedures (1)</b> 39:18 <b>proceed (2)</b> 27:16;42:9 <b>proceeded (2)</b> 26:17;41:15 <b>proceeding (11)</b> 22:9;57:24;63:16; 65:6,7;68:16,17,19; 78:7,21;81:20 <b>proceedings (6)</b> 6:10;23:3,13;68:12; 75:21;95:19
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<b>process (15)</b> 4:12;25:2;39:14,15, 16,19;40:15,21; 62:12;67:6;83:20,22; 85:13,17;91:24 <b>produce (5)</b> 39:12;82:17,19; 86:18;88:13 <b>produced (12)</b> 38:4;43:1;44:7,19; 46:8;47:9,20;68:20; 74:8;84:13,16;88:12 <b>product (6)</b> 9:18;10:20;12:9; 14:12;16:5;86:19 <b>professional (6)</b> 7:1;8:20;11:17; 16:12,13,13 <b>professionals (3)</b> 4:15;7:6;16:21 <b>profiles (1)</b> 35:16 <b>progress (2)</b> 14:22;28:8 <b>prohibits (1)</b> 16:11 <b>project (3)</b> 11:5,17;13:21 <b>promise (5)</b> 31:25;33:17;48:24; 52:25;76:9 <b>promises (3)</b> 32:20;65:10;91:21 <b>promising (1)</b> 48:21 <b>proof (7)</b> 32:23;33:6;64:3,7, 8;65:2;85:6 <b>proofs (18)</b> 32:14;43:13;57:15; 58:9;65:3;66:8,11,14, 16,18,24,25;67:1,2; 68:4;69:20;70:16; 75:9 <b>properties (9)</b> 8:8;10:4;11:5,7,8; 13:7;14:1,14,21 <b>property (4)</b> 11:18;15:23;16:3, 25 <b>proposal (1)</b> 17:4 <b>proposed (2)</b> 10:2;55:22 <b>proposition (1)</b> 67:4 <b>prosecution (1)</b> 65:5 <b>protect (4)</b> 63:5;65:22;72:3; 77:14 <b>protected (3)</b> 43:23;82:2;85:18	<b>protection (4)</b> 83:18;85:7,11,14 <b>protections (2)</b> 65:21;66:2 <b>protective (10)</b> 77:19;78:10,13,25; 79:1,7;82:20;84:19; 85:4,15 <b>protects (1)</b> 64:7 <b>prove (1)</b> 82:15 <b>provide (8)</b> 10:3,6,12,13;15:3, 23;17:6;40:15 <b>provided (3)</b> 50:23,25;51:1 <b>providing (4)</b> 10:11;11:4;15:6; 16:13 <b>psychiatric (1)</b> 82:13 <b>public (34)</b> 32:6,9;33:9;36:12; 40:17;45:6,10,13,15; 46:22,25;47:1,4,5; 48:11;52:5,19;55:4; 56:12;58:23,25;59:1, 7,22;67:24;68:4;72:5; 77:10;83:20,21,21; 84:8;86:20;91:4 <b>publicly (3)</b> 56:8;60:25;83:20 <b>public's (1)</b> 77:17 <b>publish (8)</b> 62:12;68:21;69:18, 21;71:13,13;75:2; 76:17 <b>published (3)</b> 65:9;72:11;92:21 <b>pull (2)</b> 66:25;67:1 <b>pulling (1)</b> 66:19 <b>punitive (5)</b> 47:1,9,22;59:18; 60:9 <b>purely (1)</b> 91:5 <b>purpose (12)</b> 11:9;61:2,5;63:15; 67:25;70:4;79:20; 83:19,23,24;92:18,19 <b>purposes (1)</b> 65:4 <b>pursue (1)</b> 27:18 <b>put (5)</b> 15:21;25:3;26:7; 55:14;71:14 <b>putting (3)</b> 29:9;37:6;67:11	<b>Q</b>  <b>quality (1)</b> 26:22 <b>quantity (2)</b> 26:22,25 <b>questioner (1)</b> 37:3 <b>quite (1)</b> 60:14  <b>R</b>  <b>rain (1)</b> 95:16 <b>raise (1)</b> 75:22 <b>raised (1)</b> 78:6 <b>ran (1)</b> 62:11 <b>random (1)</b> 36:25 <b>rather (3)</b> 14:13,17;26:25 <b>re (1)</b> 78:1 <b>reach (1)</b> 13:15 <b>reactions (1)</b> 8:14 <b>read (16)</b> 35:2;36:9;47:2,3; 49:9,18;51:23;53:2,4; 55:23,24;59:20;64:2; 75:4;76:24;88:7 <b>reader (1)</b> 36:20 <b>reading (4)</b> 60:1,7;70:8;94:2 <b>reads (1)</b> 45:17 <b>ready (2)</b> 13:1,3 <b>real (11)</b> 4:15,22;6:20;10:9; 11:4,18;13:17;16:1, 14;21:20,21 <b>reality (2)</b> 32:18;74:19 <b>realize (2)</b> 91:15;92:7 <b>really (4)</b> 7:18;55:25;70:13; 79:17 <b>reason (4)</b> 9:6;53:1;72:13; 83:17 <b>reasonable (3)</b> 14:7,20;86:10 <b>reasonably (1)</b> 80:6	<b>reasons (4)</b> 6:7,7;14:4;93:18 <b>recall (1)</b> 32:2 <b>receive (2)</b> 52:9,10 <b>received (9)</b> 51:2,15;53:13,14; 54:4,7,10,19;89:12 <b>receives (2)</b> 89:22;91:5 <b>receiving (2)</b> 19:5;39:21 <b>recently (3)</b> 28:4;76:3;95:13 <b>recipient (1)</b> 92:1 <b>recipient's (1)</b> 92:2 <b>recognize (1)</b> 79:13 <b>recommendations (1)</b> 61:11 <b>reconcile (1)</b> 84:10 <b>reconciling (1)</b> 44:14 <b>reconsider (1)</b> 92:16 <b>record (8)</b> 4:18;5:4;17:3;32:6; 77:18;83:5,8;85:21 <b>records (5)</b> 17:9;42:25;72:16; 82:17;83:3 <b>redact (1)</b> 86:13 <b>redacted (28)</b> 45:11,13;46:25; 50:13,14,17;51:1,20; 52:11,12,22;53:12; 54:1,11,12;55:22; 57:22,23;62:6;81:9; 86:12;87:5;88:3,4; 89:16,20;90:7,19 <b>redaction (2)</b> 53:14;81:23 <b>redactions (9)</b> 51:18;54:5,7,23; 55:1,3;86:8,10,16 <b>reengineer (1)</b> 93:24 <b>refer (1)</b> 52:7 <b>reference (1)</b> 90:17 <b>referenced (1)</b> 39:17 <b>references (2)</b> 22:11;83:9 <b>referred (4)</b> 32:15;53:8,10; 87:23	<b>referring (2)</b> 56:22;70:2 <b>reflect (1)</b> 62:15 <b>refusing (1)</b> 15:2 <b>regard (1)</b> 92:12 <b>regarding (8)</b> 22:6;26:7,24,25; 27:4;42:5;43:11; 73:23 <b>regardless (3)</b> 85:15;94:5,5 <b>reinvented (1)</b> 30:15 <b>rejected (2)</b> 11:19;59:14 <b>relate (3)</b> 54:23;55:1,3 <b>related (3)</b> 39:22;40:10;43:2 <b>relates (1)</b> 92:11 <b>relationship (3)</b> 22:6;40:22;92:3 <b>relative (1)</b> 79:15 <b>relatively (1)</b> 38:17 <b>release (6)</b> 4:19;39:2;72:3; 76:6;85:8;90:12 <b>released (2)</b> 34:2;92:5 <b>releasing (1)</b> 83:24 <b>relevance (1)</b> 80:16 <b>relevant (9)</b> 13:13;17:10;43:16, 21;44:1;47:20,21; 80:8;89:8 <b>relief (7)</b> 62:8;68:17;76:15; 81:6,23;89:23;91:2 <b>relies (2)</b> 10:7;16:18 <b>remain (2)</b> 58:17;92:7 <b>remainder (1)</b> 41:17 <b>remains (1)</b> 85:6 <b>remark (1)</b> 84:3 <b>remarks (1)</b> 41:20 <b>remember (3)</b> 28:5,7;79:8 <b>remind (1)</b> 95:6 <b>remiss (1)</b>

30:23	<b>require (2)</b> 16:19;56:10	59:3,5,6;61:10;62:9, 15,23,25,25;63:9,11; 64:15;66:20;67:2; 69:13;71:15,15,19,19, 23;73:12;74:22;80:3, 18,21;90:18;92:14, 14;93:4,22	92:7	70:12;76:15;81:4,16, 16;82:12;85:7;89:23
<b>remote (1)</b> 6:11	<b>required (5)</b> 7:11;39:16;61:4; 77:13;80:14	<b>rights (3)</b> 70:6;91:23;92:12	<b>satisfying (1)</b> 81:3	<b>seem (4)</b> 11:12;38:13;39:10; 45:21
<b>remotely (2)</b> 6:12,17	<b>requirement (1)</b> 7:3	<b>rise (1)</b> 4:4	<b>saw (1)</b> 48:11	<b>seemingly (1)</b> 47:10
<b>removal (1)</b> 56:6	<b>requires (1)</b> 94:8	<b>risk (1)</b> 29:3	<b>saying (9)</b> 14:3;25:12;36:16; 52:25;53:25;58:22; 62:25;79:6;82:16	<b>seems (7)</b> 9:15;38:15;39:7; 44:15;46:17;48:18; 49:2
<b>remove (6)</b> 71:16;81:23;88:1,4; 89:2,4	<b>rerun (1)</b> 39:2	<b>road (1)</b> 29:18	<b>scandal (3)</b> 43:22;44:12;45:5	<b>sees (2)</b> 19:4;36:23
<b>removed (7)</b> 50:11;85:24;86:12, 16,25;89:24;90:1	<b>research (1)</b> 74:11	<b>role (1)</b> 23:6	<b>scandalous (23)</b> 43:15;44:1,15,16; 45:15,17;46:10,12,16; 47:6,19;48:1,4,6,13; 59:1,8,13;60:20,22; 69:15;77:9;82:2	<b>sending (1)</b> 40:21
<b>renting (1)</b> 15:15	<b>reserve (6)</b> 30:19;31:18,20,21; 41:13,17	<b>rolls (1)</b> 62:24	<b>scandals (1)</b> 44:17	<b>sense (4)</b> 29:17;47:14;57:25; 84:14
<b>repeat (2)</b> 57:1;62:18	<b>resolution (3)</b> 19:6;27:16,25	<b>Roman (3)</b> 4:8;5:3;83:1	<b>scenario (2)</b> 36:15;37:2	<b>sent (2)</b> 23:10;52:22
<b>repeated (1)</b> 66:3	<b>resolve (1)</b> 71:1	<b>Rome (1)</b> 5:10	<b>school (12)</b> 15:11;28:25;33:7, 12;35:8,9,12,22; 36:10;37:13,19;69:10	<b>separate (1)</b> 29:1
<b>rephrase (1)</b> 14:7	<b>respectfully (1)</b> 92:16	<b>Rosa (1)</b> 29:2	<b>schools (1)</b> 10:4	<b>serious (1)</b> 76:22
<b>replaced (1)</b> 23:22	<b>respond (6)</b> 6:17;18:9,18;20:16; 34:7;41:8	<b>roughly (3)</b> 94:14,18;95:9	<b>Schwartz (1)</b> 25:8	<b>serve (2)</b> 61:12;78:12
<b>reply (7)</b> 78:3,6;80:24;81:4, 22;82:4,6	<b>respondent (1)</b> 25:15	<b>roving (2)</b> 63:21;64:5	<b>scope (3)</b> 11:5;42:5;61:6	<b>served (2)</b> 72:17;73:9
<b>report (7)</b> 18:14;19:3,11;26:3; 27:9;29:14;30:11	<b>response (2)</b> 27:7,9	<b>rule (12)</b> 42:1,11,19;43:1,16, 23;44:1,5,19;46:4; 48:7;56:9	<b>seal (7)</b> 52:5;57:17,24;58:1; 60:13;68:21;81:20	<b>service (1)</b> 16:14
<b>reported (1)</b> 75:20	<b>responses (1)</b> 93:8	<b>ruled (2)</b> 45:4;46:20	<b>sealed (9)</b> 48:12;51:5;52:1; 58:5;64:3;80:25; 81:22,24;82:1	<b>services (2)</b> 16:15;17:6
<b>reports (10)</b> 9:23;10:6,12,13,23; 11:4;12:21,22;15:4,6	<b>responsiveness (1)</b> 27:1	<b>ruling (4)</b> 25:5;38:11;45:24; 46:20	<b>sealing (4)</b> 58:2;81:1,20,21	<b>serving (1)</b> 72:19
<b>represent (3)</b> 16:22,25;26:20	<b>restate (1)</b> 93:23	<b>rulings (3)</b> 19:5,7;20:25	<b>searching (1)</b> 9:9	<b>session (1)</b> 4:4
<b>representation (4)</b> 7:24;8:10;54:10; 66:14	<b>result (3)</b> 10:9;26:22;93:22	<b>run (1)</b> 61:16	<b>seated (2)</b> 4:7;18:17	<b>set (4)</b> 11:7,7;21:17;30:5
<b>representatives (2)</b> 17:17;93:10	<b>results (3)</b> 28:4;47:11;48:17		<b>second (7)</b> 4:10;23:17;46:24; 51:24;70:1;72:20; 75:1	<b>sets (5)</b> 42:12,24;43:9; 64:25;65:4
<b>represented (1)</b> 93:12	<b>retired (5)</b> 44:10,21;45:8; 60:23;62:6		<b>second-guess (1)</b> 39:23	<b>settle (1)</b> 60:5
<b>representing (1)</b> 17:1	<b>reverse (1)</b> 75:7	<b>S</b>	<b>Section (11)</b> 7:4;42:10;43:11,12; 44:7;46:11;47:19; 68:12;77:16;84:9,21	<b>settlement (2)</b> 13:15;65:7
<b>reproduce (3)</b> 90:15;91:3;93:24	<b>reversed (1)</b> 45:16	<b>Saint (8)</b> 36:7,8,18,19,22,23, 24;37:1	<b>seeing (2)</b> 36:17;95:13	<b>seven (1)</b> 20:22
<b>reputable (1)</b> 14:19	<b>review (9)</b> 13:25;32:16;48:18; 52:20;61:5,6;62:10; 83:6;86:6	<b>same (15)</b> 10:5;16:16;26:17; 28:18,19;33:14; 37:12,13;41:22; 42:21;64:3;66:16,24; 67:19;69:10	<b>seek (3)</b> 20:25;55:13;76:13	<b>several (4)</b> 41:1;51:25;61:8; 75:20
<b>request (19)</b> 4:14,22;6:5;18:10; 26:19;50:16;52:8; 55:15,18,19;73:11; 74:10;80:25;85:25; 87:19;91:15;92:16; 94:6;95:3	<b>reviews (1)</b> 61:10	<b>SAN (5)</b> 4:1,9;5:3;29:2,5	<b>seeking (16)</b> 22:9;26:1,2;43:5; 44:2;45:12;50:2;58:1;	<b>sexual (1)</b> 61:20
<b>requested (4)</b> 4:16;6:3;11:14; 62:8	<b>revisit (2)</b> 93:23;95:5	<b>Santa (1)</b> 29:2		<b>sexually (1)</b> 60:20
<b>requesting (2)</b> 6:14;87:20	<b>right (59)</b> 8:5;9:13;10:12; 11:7;12:3;13:3;21:25; 22:2,4,12;25:18; 30:10,10;34:10; 35:18;37:2;38:9;41:6; 43:21;44:12;45:2; 46:9,13;48:25;50:14; 55:21;58:9,10,16;	<b>satisfied (2)</b> 17:24;76:5		<b>share (3)</b> 15:4,9;26:17
<b>requests (1)</b> 15:21		<b>satisfies (1)</b> 81:1		<b>shared (1)</b> 26:5
		<b>satisfy (1)</b>		<b>sheer (1)</b> 26:25
				<b>Sheppard (2)</b> 5:11;57:4
				<b>SHINE (19)</b>

5:24,25;6:21,25; 7:5,10,13,17,23;8:2,6, 9,22;9:1,4,12;14:18; 16:18;18:5 <b>shock (1)</b> 19:2 <b>shocked (1)</b> 32:8 <b>short-term (1)</b> 29:11 <b>show (5)</b> 26:11;29:13;51:8, 19:70:1 <b>showing (1)</b> 85:6 <b>shown (1)</b> 54:17 <b>shows (2)</b> 33:3;52:16 <b>side (1)</b> 69:24 <b>sides (4)</b> 7:24;11:19;17:1; 93:11 <b>signals (1)</b> 23:7 <b>signed (2)</b> 66:8,9 <b>significantly (1)</b> 37:14 <b>silence (1)</b> 91:25 <b>similar (6)</b> 22:13;23:10,15,18; 63:20;76:3 <b>simple (3)</b> 14:3;73:7;79:17 <b>simply (9)</b> 28:15;41:25;48:5; 52:8;53:7;54:19; 56:11;58:3;63:14 <b>single (2)</b> 32:8;60:24 <b>single-plaintiff (1)</b> 82:9 <b>sit (5)</b> 28:17;29:8;47:24; 48:23;76:24 <b>sitting (1)</b> 59:23 <b>situates (1)</b> 40:24 <b>situation (3)</b> 33:25;35:7;36:13 <b>situations (1)</b> 63:20 <b>six (2)</b> 9:25;10:2 <b>sixty (1)</b> 27:4 <b>skills (1)</b> 14:20 <b>skipping (1)</b>	70:6 <b>slightly (1)</b> 81:18 <b>small (2)</b> 33:4;40:9 <b>smaller (1)</b> 33:4 <b>smallest (1)</b> 41:3 <b>snapshot (1)</b> 18:19 <b>sneaking (1)</b> 95:12 <b>so-called (4)</b> 29:11;48:10;49:21; 70:7 <b>soils (1)</b> 15:24 <b>sole (2)</b> 70:4;85:25 <b>solutions (2)</b> 17:22;27:21 <b>solve (2)</b> 28:21;92:10 <b>somebody (10)</b> 12:24;14:9;15:14, 15:22;22:47:5;72:16; 73:15;87:10;88:24 <b>somebody's (1)</b> 94:10 <b>somehow (1)</b> 35:9 <b>someone (11)</b> 6:16;8:18,19;16:2; 33:20;36:8,23;37:5; 69:9;74:5;91:23 <b>something's (1)</b> 9:8 <b>Sometimes (3)</b> 21:9;47:13;93:6 <b>Sonoma (1)</b> 28:20 <b>soon (2)</b> 24:16;27:17 <b>sooner (1)</b> 95:14 <b>sorry (16)</b> 9:14;10:1;12:13; 16:13;41:11;56:21, 21:64;13;69:4;73:21; 76:22;77:3,20;79:14; 81:7;89:9 <b>sort (10)</b> 8:14;12:19;24:25; 41:14;54:21;62:7; 76:20;77:1;94:14,21 <b>sounds (1)</b> 39:8 <b>source (1)</b> 47:25 <b>Southern (1)</b> 78:2 <b>speak (2)</b>	77:3;79:9 <b>SPEAKER (2)</b> 64:13,14 <b>speaking (1)</b> 8:10 <b>special (1)</b> 5:10 <b>specialist (1)</b> 8:17 <b>specific (3)</b> 8:11;15:7;57:10 <b>specifically (9)</b> 6:24;16:15;20:24; 37:22,23;58:16; 69:25;77:11;78:16 <b>specifics (1)</b> 87:8 <b>spend (1)</b> 13:24 <b>split (1)</b> 48:18 <b>staff (1)</b> 57:13 <b>stage (3)</b> 19:4,20;88:25 <b>stages (1)</b> 20:22 <b>tagging (1)</b> 28:11 <b>stamp (2)</b> 86:22;91:4 <b>stand (1)</b> 57:17 <b>standard (10)</b> 42:10,10,11,20; 43:3;44:5,8;57:10; 78:20;81:20 <b>standards (3)</b> 42:24;48:18;58:6 <b>standing (10)</b> 24:8;62:17;65:20, 20,21;71:17;75:14,22, 24;93:6 <b>stands (2)</b> 10:1;78:9 <b>standstill (1)</b> 29:11 <b>Stang (3)</b> 5:17;19:1;71:24 <b>start (9)</b> 4:10;14:2,11;19:5; 34:12;37:6;57:9; 69:11;84:4 <b>starters (1)</b> 16:18 <b>starting (3)</b> 19:17,21;85:1 <b>state (31)</b> 19:22,25;20:14; 21:1,2,16;22:12,13; 23:1,7,11;25:7,9,13, 14;27:23;37:18; 63:24;70:16;73:4;	79:12;80:1,4,12,17; 82:7,8,9;83:2,7;85:21 <b>stated (4)</b> 67:12,13;68:7; 83:17 <b>statement (12)</b> 18:10;23:15;26:9; 27:14;32:20;46:16; 49:19;62:3;69:23; 70:11,24;81:3 <b>statements (4)</b> 26:24;31:20;63:18; 66:3 <b>States (5)</b> 4:24;5:25;9:7;26:4; 77:16 <b>statistic (3)</b> 32:17,18;33:17 <b>Statistically (2)</b> 72:15,16 <b>statistician (1)</b> 35:14 <b>status (21)</b> 4:15;5:8;18:10,14, 18;19:3,3,11;22:24; 23:12;26:3;27:9,13; 29:14,17;30:5,11; 94:14,19,23;95:11 <b>statute (5)</b> 16:18;42:18;43:20; 45:17;46:4 <b>stay (16)</b> 18:17,17;19:25; 22:15;23:8,20;24:17, 19,21;25:3,10,14; 50:14;79:10;80:25; 81:24 <b>step (5)</b> 38:25;43:4;45:6,9; 56:15 <b>steps (1)</b> 85:7 <b>still (18)</b> 6:22;12:19;27:1; 34:25;36:20;44:11, 13;45:10;48:25;49:2; 58:25;60:22;62:17; 67:3;69:1;70:23; 72:25;87:2 <b>stipulated (7)</b> 78:10,13;79:1; 81:11;85:5,8,15 <b>stipulation (6)</b> 10:2,8,10;11:16; 12:10,12 <b>straight (1)</b> 35:4 <b>straightened (4)</b> 22:16,18,20;55:9 <b>street (1)</b> 10:11 <b>strengths (1)</b> 77:17	<b>stretch (1)</b> 49:2 <b>strict (1)</b> 57:6 <b>strictest (1)</b> 91:21 <b>strictly (1)</b> 75:11 <b>strictness (1)</b> 65:10 <b>strikes (1)</b> 14:11 <b>struck (1)</b> 15:1 <b>struggling (1)</b> 47:16 <b>stuck (1)</b> 94:15 <b>students (2)</b> 37:11,12 <b>studied (1)</b> 30:13 <b>subject (6)</b> 12:19;17:14;20:1; 24:17;85:8;86:23 <b>subjected (2)</b> 40:16,19 <b>subjective (1)</b> 69:1 <b>submit (1)</b> 81:1 <b>submitted (1)</b> 53:9 <b>subtract (1)</b> 72:20 <b>successes (1)</b> 28:3 <b>suffer (1)</b> 44:4 <b>sufficient (1)</b> 18:19 <b>suggest (2)</b> 17:1;94:13 <b>suggested (1)</b> 29:19 <b>suggesting (1)</b> 70:13 <b>suggestion (4)</b> 6:16;90:4;91:12,17 <b>summarized (3)</b> 17:7;29:13;60:8 <b>summary (2)</b> 58:8;76:17 <b>Summerhays (1)</b> 5:6 <b>superior (3)</b> 23:24;24:3,10 <b>supplants (1)</b> 59:4 <b>supplement (1)</b> 32:20 <b>supplemental (2)</b> 64:8;65:4
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<b>supplements (1)</b> 43:14 <b>support (2)</b> 34:23;60:10 <b>supported (1)</b> 40:8 <b>supposed (6)</b> 11:23;21:6,8;51:6; 71:1;89:17 <b>sure (18)</b> 4:12;19:14;21:14; 23:5;24:7;29:22;30:2; 31:4;36:4;52:21; 66:16;77:6;88:17; 93:14,19;94:3,6;95:9 <b>survived (1)</b> 29:4 <b>survivor (10)</b> 32:17,19;33:11; 34:14;35:6;42:4; 52:12;54:12;63:18; 65:2 <b>survivors (17)</b> 27:24;28:18,19; 33:11;34:13,17,23; 39:21;40:20,23;48:4; 56:16;65:15,22,23; 66:3;72:4 <b>suspect (1)</b> 37:10 <b>suspicion (1)</b> 95:12 <b>system (1)</b> 40:15	<b>tenant (2)</b> 15:15;16:25 <b>term (3)</b> 16:20;21:24;47:19 <b>terminology (2)</b> 71:2;74:16 <b>terms (6)</b> 10:11;15:2,11,22; 25:1;81:5 <b>test (10)</b> 21:15,20,20;43:4,8, 11;44:17;45:9;48:7,9 <b>tests (4)</b> 21:16;44:15;83:4,9 <b>thanking (1)</b> 34:12 <b>Thanks (1)</b> 56:20 <b>there'd (1)</b> 13:7 <b>therefore (6)</b> 8:15;53:8;58:23; 62:21,24;75:24 <b>thinking (3)</b> 24:6;35:6;37:18 <b>third (2)</b> 45:9;84:20 <b>third-part (1)</b> 48:7 <b>thirty (4)</b> 11:8;14:1;27:4; 80:16 <b>though (5)</b> 45:4;46:12,15;48:1; 66:19 <b>thought (10)</b> 20:7;38:21;47:5; 49:8;76:18,19,25; 77:23;81:13;93:15 <b>three (8)</b> 4:13;44:16;46:7,21; 59:7;71:13,24;90:19 <b>three-part (1)</b> 44:17 <b>throughout (2)</b> 52:14;65:10 <b>thrust (1)</b> 55:14 <b>THURSDAY (3)</b> 4:1;94:15,19 <b>tied (1)</b> 63:22 <b>till (1)</b> 64:12 <b>times (2)</b> 66:22;67:22 <b>tiny (1)</b> 33:4 <b>title (1)</b> 86:5 <b>Tobin (1)</b> 5:9 <b>today (19)</b>	16:7;19:18;21:2; 23:1;28:17;29:15,23; 30:3,24;34:13,16,18, 20;55:12;56:1,5; 67:11;81:5;93:16 <b>together (2)</b> 27:20;37:7 <b>told (7)</b> 16:17;22:13,13; 29:25;33:13;46:5; 75:6 <b>took (3)</b> 41:14;81:22;86:2 <b>top (4)</b> 7:10,13;8:11;87:16 <b>tort (3)</b> 22:1;40:1;60:10 <b>total (1)</b> 41:15 <b>toxic (1)</b> 15:24 <b>traced (1)</b> 35:9 <b>track (2)</b> 28:18;95:3 <b>tragedies (1)</b> 29:4 <b>tragedy (1)</b> 32:19 <b>transcripts (1)</b> 76:4 <b>transferred (1)</b> 73:1 <b>transparency (1)</b> 68:11 <b>tread (1)</b> 79:19 <b>treated (1)</b> 29:4 <b>treatment (2)</b> 28:19;84:11 <b>trial (8)</b> 10:23,25;13:1,3,12; 45:14;47:12;82:9 <b>trial-ready (1)</b> 21:18 <b>trip (1)</b> 19:15 <b>trouble (1)</b> 44:14 <b>troubled (1)</b> 32:9 <b>troublesome (1)</b> 29:3 <b>true (7)</b> 39:18;41:22;49:20; 63:17;68:1,6;70:13 <b>Trustee (6)</b> 4:24;5:25;6:21,25; 9:7;18:6 <b>Trustee's (1)</b> 16:10 <b>try (7)</b>	6:5;13:14;45:22; 53:16;71:3,4;76:24 <b>trying (10)</b> 9:10;13:2;17:10; 27:19,20,21;45:21,21; 75:3;79:5 <b>turn (4)</b> 14:23;21:12;33:17; 64:11 <b>turned (1)</b> 64:12 <b>turning (1)</b> 14:25 <b>twenty (5)</b> 11:8;13:7;14:1; 41:15,16 <b>twenty-seven (1)</b> 60:11 <b>two (29)</b> 12:8;17:1;18:3; 19:18;20:4,16;21:1, 13,16;27:15;30:24; 36:16;37:6;41:3; 42:11,20,23,24;43:4; 44:15;45:6;47:10; 58:6;60:12;66:25; 67:1;79:18;84:5;93:5 <b>two-and-a-half (1)</b> 44:16 <b>two-and-a-half-step (1)</b> 43:4 <b>two-step (3)</b> 45:9;85:13,17 <b>two-way (1)</b> 10:10 <b>types (3)</b> 33:1;40:12;41:3	<b>undertake (1)</b> 92:4 <b>unfiled (1)</b> 58:4 <b>UNIDENTIFIED (2)</b> 64:13,14 <b>United (3)</b> 4:23;5:25;9:7 <b>unless (7)</b> 41:13;45:25;50:25; 59:1,1,7;95:3 <b>unlike (2)</b> 6:11;41:1 <b>unprotected (2)</b> 55:15,18 <b>unreasonable (2)</b> 11:12;41:21 <b>unredact (1)</b> 81:16 <b>unredacted (6)</b> 46:21;50:24;51:5; 52:1;55:21;81:13 <b>unresolved (1)</b> 60:10 <b>unseal (3)</b> 4:18;81:4,17 <b>unsealed (2)</b> 54:4;58:5 <b>unsecured (1)</b> 5:18 <b>unwilling (1)</b> 17:20 <b>up (28)</b> 14:15;15:18;17:17; 22:25;24:16,23; 25:19;26:6;29:13,21; 30:7;35:23,24;44:10, 24;51:23;52:16;53:1, 16;54:2;77:6;78:9; 79:6;83:5;87:16;88:2; 93:6;94:24 <b>upcoming (1)</b> 68:18 <b>update (2)</b> 19:23;20:10 <b>upon (9)</b> 10:7;11:6;46:3; 73:3;80:5;93:15,22; 94:10;95:12 <b>use (12)</b> 10:22,25;11:19; 12:5,22;35:7;65:2,20; 68:11;74:15;79:22; 89:7 <b>used (3)</b> 9:22;65:19;76:21 <b>useful (1)</b> 11:19 <b>using (1)</b> 16:12 <b>usual (1)</b> 53:21 <b>usually (3)</b>
<b>T</b>				
<b>table (2)</b> 28:10;71:22 <b>talk (1)</b> 15:11 <b>talked (1)</b> 69:25 <b>talking (4)</b> 18:20;64:21;84:6,6 <b>talks (1)</b> 37:8 <b>teacher (3)</b> 37:5,12,13 <b>technical (4)</b> 6:7;16:17;32:12; 46:18 <b>tee (3)</b> 24:15,16;25:18 <b>teed (1)</b> 26:6 <b>telling (4)</b> 24:8;43:17;72:12; 75:7 <b>tells (3)</b> 32:25;46:1;59:22 <b>temporal (1)</b> 67:22	<b>thought (10)</b> 20:7;38:21;47:5; 49:8;76:18,19,25; 77:23;81:13;93:15 <b>three (8)</b> 4:13;44:16;46:7,21; 59:7;71:13,24;90:19 <b>three-part (1)</b> 44:17 <b>throughout (2)</b> 52:14;65:10 <b>thrust (1)</b> 55:14 <b>THURSDAY (3)</b> 4:1;94:15,19 <b>tied (1)</b> 63:22 <b>till (1)</b> 64:12 <b>times (2)</b> 66:22;67:22 <b>tiny (1)</b> 33:4 <b>title (1)</b> 86:5 <b>Tobin (1)</b> 5:9 <b>today (19)</b>	16:7;19:18;21:2; 23:1;28:17;29:15,23; 30:3,24;34:13,16,18, 20;55:12;56:1,5; 67:11;81:5;93:16 <b>together (2)</b> 27:20;37:7 <b>told (7)</b> 16:17;22:13,13; 29:25;33:13;46:5; 75:6 <b>took (3)</b> 41:14;81:22;86:2 <b>top (4)</b> 7:10,13;8:11;87:16 <b>tort (3)</b> 22:1;40:1;60:10 <b>total (1)</b> 41:15 <b>toxic (1)</b> 15:24 <b>traced (1)</b> 35:9 <b>track (2)</b> 28:18;95:3 <b>tragedies (1)</b> 29:4 <b>tragedy (1)</b> 32:19 <b>transcripts (1)</b> 76:4 <b>transferred (1)</b> 73:1 <b>transparency (1)</b> 68:11 <b>tread (1)</b> 79:19 <b>treated (1)</b> 29:4 <b>treatment (2)</b> 28:19;84:11 <b>trial (8)</b> 10:23,25;13:1,3,12; 45:14;47:12;82:9 <b>trial-ready (1)</b> 21:18 <b>trip (1)</b> 19:15 <b>trouble (1)</b> 44:14 <b>troubled (1)</b> 32:9 <b>troublesome (1)</b> 29:3 <b>true (7)</b> 39:18;41:22;49:20; 63:17;68:1,6;70:13 <b>Trustee (6)</b> 4:24;5:25;6:21,25; 9:7;18:6 <b>Trustee's (1)</b> 16:10 <b>try (7)</b>	6:5;13:14;45:22; 53:16;71:3,4;76:24 <b>trying (10)</b> 9:10;13:2;17:10; 27:19,20,21;45:21,21; 75:3;79:5 <b>turn (4)</b> 14:23;21:12;33:17; 64:11 <b>turned (1)</b> 64:12 <b>turning (1)</b> 14:25 <b>twenty (5)</b> 11:8;13:7;14:1; 41:15,16 <b>twenty-seven (1)</b> 60:11 <b>two (29)</b> 12:8;17:1;18:3; 19:18;20:4,16;21:1, 13,16;27:15;30:24; 36:16;37:6;41:3; 42:11,20,23,24;43:4; 44:15;45:6;47:10; 58:6;60:12;66:25; 67:1;79:18;84:5;93:5 <b>two-and-a-half (1)</b> 44:16 <b>two-and-a-half-step (1)</b> 43:4 <b>two-step (3)</b> 45:9;85:13,17 <b>two-way (1)</b> 10:10 <b>types (3)</b> 33:1;40:12;41:3	<b>undertake (1)</b> 92:4 <b>unfiled (1)</b> 58:4 <b>UNIDENTIFIED (2)</b> 64:13,14 <b>United (3)</b> 4:23;5:25;9:7 <b>unless (7)</b> 41:13;45:25;50:25; 59:1,1,7;95:3 <b>unlike (2)</b> 6:11;41:1 <b>unprotected (2)</b> 55:15,18 <b>unreasonable (2)</b> 11:12;41:21 <b>unredact (1)</b> 81:16 <b>unredacted (6)</b> 46:21;50:24;51:5; 52:1;55:21;81:13 <b>unresolved (1)</b> 60:10 <b>unseal (3)</b> 4:18;81:4,17 <b>unsealed (2)</b> 54:4;58:5 <b>unsecured (1)</b> 5:18 <b>unwilling (1)</b> 17:20 <b>up (28)</b> 14:15;15:18;17:17; 22:25;24:16,23; 25:19;26:6;29:13,21; 30:7;35:23,24;44:10, 24;51:23;52:16;53:1, 16;54:2;77:6;78:9; 79:6;83:5;87:16;88:2; 93:6;94:24 <b>upcoming (1)</b> 68:18 <b>update (2)</b> 19:23;20:10 <b>upon (9)</b> 10:7;11:6;46:3; 73:3;80:5;93:15,22; 94:10;95:12 <b>use (12)</b> 10:22,25;11:19; 12:5,22;35:7;65:2,20; 68:11;74:15;79:22; 89:7 <b>used (3)</b> 9:22;65:19;76:21 <b>useful (1)</b> 11:19 <b>using (1)</b> 16:12 <b>usual (1)</b> 53:21 <b>usually (3)</b>
<b>U</b>				
<b>table (2)</b> 28:10;71:22 <b>talk (1)</b> 15:11 <b>talked (1)</b> 69:25 <b>talking (4)</b> 18:20;64:21;84:6,6 <b>talks (1)</b> 37:8 <b>teacher (3)</b> 37:5,12,13 <b>technical (4)</b> 6:7;16:17;32:12; 46:18 <b>tee (3)</b> 24:15,16;25:18 <b>teed (1)</b> 26:6 <b>telling (4)</b> 24:8;43:17;72:12; 75:7 <b>tells (3)</b> 32:25;46:1;59:22 <b>temporal (1)</b> 67:22	<b>thought (10)</b> 20:7;38:21;47:5; 49:8;76:18,19,25; 77:23;81:13;93:15 <b>three (8)</b> 4:13;44:16;46:7,21; 59:7;71:13,24;90:19 <b>three-part (1)</b> 44:17 <b>throughout (2)</b> 52:14;65:10 <b>thrust (1)</b> 55:14 <b>THURSDAY (3)</b> 4:1;94:15,19 <b>tied (1)</b> 63:22 <b>till (1)</b> 64:12 <b>times (2)</b> 66:22;67:22 <b>tiny (1)</b> 33:4 <b>title (1)</b> 86:5 <b>Tobin (1)</b> 5:9 <b>today (19)</b>	16:7;19:18;21:2; 23:1;28:17;29:15,23; 30:3,24;34:13,16,18, 20;55:12;56:1,5; 67:11;81:5;93:16 <b>together (2)</b> 27:20;37:7 <b>told (7)</b> 16:17;22:13,13; 29:25;33:13;46:5; 75:6 <b>took (3)</b> 41:14;81:22;86:2 <b>top (4)</b> 7:10,13;8:11;87:16 <b>tort (3)</b> 22:1;40:1;60:10 <b>total (1)</b> 41:15 <b>toxic (1)</b> 15:24 <b>traced (1)</b> 35:9 <b>track (2)</b> 28:18;95:3 <b>tragedies (1)</b> 29:4 <b>tragedy (1)</b> 32:19 <b>transcripts (1)</b> 76:4 <b>transferred (1)</b> 73:1 <b>transparency (1)</b> 68:11 <b>tread (1)</b> 79:19 <b>treated (1)</b> 29:4 <b>treatment (2)</b> 28:19;84:11 <b>trial (8)</b> 10:23,25;13:1,3,12; 45:14;47:12;82:9 <b>trial-ready (1)</b> 21:18 <b>trip (1)</b> 19:15 <b>trouble (1)</b> 44:14 <b>troubled (1)</b> 32:9 <b>troublesome (1)</b> 29:3 <b>true (7)</b> 39:18;41:22;49:20; 63:17;68:1,6;70:13 <b>Trustee (6)</b> 4:24;5:25;6:21,25; 9:7;18:6 <b>Trustee's (1)</b> 16:10 <b>try (7)</b>	6:5;13:14;45:22; 53:16;71:3,4;76:24 <b>trying (10)</b> 9:10;13:2;17:10; 27:19,20,21;45:21,21; 75:3;79:5 <b>turn (4)</b> 14:23;21:12;33:17; 64:11 <b>turned (1)</b> 64:12 <b>turning (1)</b> 14:25 <b>twenty (5)</b> 11:8;13:7;14:1; 41:15,16 <b>twenty-seven (1)</b> 60:11 <b>two (29)</b> 12:8;17:1;18:3; 19:18;20:4,16;21:1, 13,16;27:15;30:24; 36:16;37:6;41:3; 42:11,20,23,24;43:4; 44:15;45:6;47:10; 58:6;60:12;66:25; 67:1;79:18;84:5;93:5 <b>two-and-a-half (1)</b> 44:16 <b>two-and-a-half-step (1)</b> 43:4 <b>two-step (3)</b> 45:9;85:13,17 <b>two-way (1)</b> 10:10 <b>types (3)</b> 33:1;40:12;41:3	<b>undertake (1)</b> 92:4 <b>unfiled (1)</b> 58:4 <b>UNIDENTIFIED (2)</b> 64:13,14 <b>United (3)</b> 4:23;5:25;9:7 <b>unless (7)</b> 41:13;45:25;50:25; 59:1,1,7;95:3 <b>unlike (2)</b> 6:11;41:1 <b>unprotected (2)</b> 55:15,18 <b>unreasonable (2)</b> 11:12;41:21 <b>unredact (1)</b> 81:16 <b>unredacted (6)</b> 46:21;50:24;51:5; 52:1;55:21;81:13 <b>unresolved (1)</b> 60:10 <b>unseal (3)</b> 4:18;81:4,17 <b>unsealed (2)</b> 54:4;58:5 <b>unsecured (1)</b> 5:18 <b>unwilling (1)</b> 17:20 <b>up (28)</b> 14:15;15:18;17:17; 22:25;24:16,23; 25:19;26:6;29:13,21; 30:7;35:23,24;44:10, 24;51:23;52:16;53:1, 16;54:2;77:6;78:9; 79:6;83:5;87:16;88:2; 93:6;94:24 <b>upcoming (1)</b> 68:18 <b>update (2)</b> 19:23;20:10 <b>upon (9)</b> 10:7;11:6;46:3; 73:3;80:5;93:15,22; 94:10;95:12 <b>use (12)</b> 10:22,25;11:19; 12:5,22;35:7;65:2,20; 68:11;74:15;79:22; 89:7 <b>used (3)</b> 9:22;65:19;76:21 <b>useful (1)</b> 11:19 <b>using (1)</b> 16:12 <b>usual (1)</b> 53:21 <b>usually (3)</b>



51:4;52:1;82:12 <b>usurp (1)</b> 23:6	5:7,21;6:20;11:9; 14:13,19;16:3;17:6 <b>walk (2)</b> 14:25;36:16 <b>wants (5)</b> 8:7;9:18;17:19; 27:18;81:10 <b>waste (1)</b> 16:5 <b>way (25)</b> 12:1;15:15,24; 16:24;18:7;25:12; 30:2;32:12;33:22; 34:3;35:6,11;37:23; 41:21;45:17,19,22; 48:18;49:18;51:4; 52:1;56:3;59:23; 69:23;84:14 <b>website (3)</b> 70:7,7;71:18 <b>weeks (11)</b> 9:25;10:2;19:18; 20:4;21:1,13;22:14, 25;30:24;82:19;95:9 <b>Weinstein (1)</b> 5:10 <b>Weintraub (1)</b> 5:9 <b>welcome (1)</b> 27:8 <b>weren't (2)</b> 40:4;93:18 <b>what's (14)</b> 7:22;9:19;11:10; 15:16;27:14;36:12; 38:3;55:23;68:23; 72:23,24;81:9;83:4; 92:17 <b>wheel (1)</b> 30:15 <b>whereas (2)</b> 53:10;60:18 <b>Where's (1)</b> 8:8 <b>Whereupon (1)</b> 95:19 <b>whole (2)</b> 30:6;67:25 <b>who's (5)</b> 16:25;24:1;36:9; 62:6;73:25 <b>whose (3)</b> 32:4;37:5;62:18 <b>willing (6)</b> 11:13;14:10;15:9; 56:14;91:12;92:5 <b>Wisconsin (1)</b> 63:24 <b>Wise (2)</b> 23:23,24 <b>wish (3)</b> 31:25;34:8;93:18 <b>wishes (1)</b>	6:10 <b>withdrew (1)</b> 80:24 <b>withheld (1)</b> 19:7 <b>within (4)</b> 16:14;73:5;77:15; 83:12 <b>without (10)</b> 17:18;20:13,17; 52:24;53:14;62:10; 76:16;77:10;90:16; 91:3 <b>wizard (1)</b> 35:14 <b>word (27)</b> 21:19;43:15,18,18; 44:1;45:17;46:1,1,10; 47:14;51:10,20; 62:23;65:20,20; 68:11;76:21,21;86:4; 87:16;88:7,21;89:16, 20;90:7,19;93:24 <b>words (9)</b> 8:16;10:16;43:16; 45:15,20;62:15;70:6; 87:17;88:3 <b>work (10)</b> 4:22;9:18;10:19; 12:9;14:12;27:19,20, 20;34:15;89:25 <b>worked (2)</b> 40:7;73:14 <b>working (3)</b> 12:1;27:1;45:18 <b>world (2)</b> 68:22;89:17 <b>worry (8)</b> 12:15;17:23;23:8; 28:9,11;40:5;50:3; 95:2 <b>worse (3)</b> 9:10;33:8;36:14 <b>worst (1)</b> 36:11 <b>worth (5)</b> 10:17;12:6,7;20:20; 39:12 <b>write (2)</b> 70:19;83:5 <b>written (1)</b> 82:18 <b>wrong (9)</b> 10:25;13:10;38:3; 47:15;51:24;66:21, 23;82:25;93:24 <b>wrote (2)</b> 82:18;83:11	28:14 <b>years (6)</b> 29:8;37:13;63:23; 73:4;80:16;89:10 <b>yellow (16)</b> 51:4,25;52:6;53:3; 87:25;88:22,23,24; 89:8,16,18,19;90:4, 20;93:19;94:10 <b>Yep (1)</b> 85:3 <b>Yesa (1)</b> 86:9 <b>yo9u (1)</b> 49:5 <b>York (5)</b> 28:22;78:2;82:8; 83:1,13 <b>young (2)</b> 28:5,24	<b>12 (3)</b> 78:16,24,25 <b>13 (1)</b> 4:1 <b>162 (1)</b> 78:1 <b>18d (1)</b> 64:25 <b>18th (1)</b> 71:12 <b>1970s (1)</b> 35:12
<b>V</b>				<b>2</b>
<b>vacuum (1)</b> 68:19 <b>vague (1)</b> 69:11 <b>vagueness (4)</b> 67:13,14,18,19 <b>Vallejo (2)</b> 29:6,6 <b>valuation (6)</b> 10:10;11:4;13:13; 15:3;16:1;65:5 <b>valuations (1)</b> 11:22 <b>value (6)</b> 13:9;14:8,13,21; 16:4;17:10 <b>values (2)</b> 8:8;13:7 <b>various (2)</b> 84:15;93:18 <b>vast (1)</b> 92:5 <b>venue (1)</b> 35:24 <b>version (9)</b> 50:24;51:1,14,24; 52:22;54:5,19;55:22; 75:1 <b>versus (2)</b> 39:16;92:17 <b>victim (10)</b> 33:2,5,6,20;36:11, 14;40:3;61:9;67:16; 69:9 <b>victims (7)</b> 28:17,19;33:1; 35:15,19,20,21 <b>view (5)</b> 19:3;26:17;28:2; 42:21;49:3 <b>views (2)</b> 19:16;27:15 <b>violating (2)</b> 20:18,18 <b>visit (1)</b> 18:7				<b>2.0 (1)</b> 75:1 <b>2013 (1)</b> 78:3 <b>2015 (1)</b> 86:6 <b>2018 (1)</b> 87:15 <b>2023 (1)</b> 64:10 <b>2025 (3)</b> 4:1;71:12,12 <b>21st (2)</b> 64:10,21 <b>23 (1)</b> 26:14 <b>26 (10)</b> 42:11,19;43:1,16, 24;44:1,5,19;46:4; 48:7 <b>2a (1)</b> 84:21
			<b>Z</b>	
			<b>Ziehl (2)</b> 5:17;19:1 <b>Zoom (9)</b> 5:4,5,21;6:2,7; 30:25;31:12;34:17,24	
			<b>1</b>	
			<b>1:30 (1)</b> 4:1 <b>100,000 (2)</b> 13:25;14:10 <b>100,000-dollar (1)</b> 17:14 <b>1028 (1)</b> 70:3 <b>105 (1)</b> 63:21 <b>105a (1)</b> 64:5 <b>107 (18)</b> 42:10;43:11,12,21; 44:7;46:11;47:19; 57:24;58:11,16,22; 59:3,4,6;68:13;77:16; 78:4;84:9 <b>107a (1)</b> 58:13 <b>107b (9)</b> 75:13;76:6;77:8,15; 78:17,20;81:3;82:1; 83:18 <b>107b2 (2)</b> 59:9;69:14 <b>10th (1)</b> 71:11 <b>11 (3)</b> 26:3,12,13 <b>1103 (2)</b> 7:4,12	<b>3</b>
<b>W</b>				
<b>Wait (5)</b> 7:7;29:8;37:7; 64:12;77:20 <b>waiting (2)</b> 19:15;29:23 <b>waives (1)</b> 91:23 <b>Wakefield (8)</b>				<b>3 (2)</b> 20:11;72:2 <b>3:39 (1)</b> 95:19 <b>31st (1)</b> 71:24 <b>327 (2)</b> 7:20;8:16 <b>327a (1)</b> 7:21 <b>337 (2)</b> 64:22,23 <b>370 (1)</b> 79:4
		<b>Y</b>		<b>4</b>
		<b>year (4)</b> 17:11,13;27:25;		<b>422 (1)</b> 60:2 <b>424 (2)</b> 84:20,23 <b>431 (2)</b> 77:16,24

492 (1) 78:1				
<b>5</b>				
5 (3) 39:1;72:2,2 500 (1) 66:11 500-and-some-odd (2) 32:14;33:24 500-plus (1) 38:14 527 (1) 67:1 530 (2) 32:3;38:3 537 (1) 66:24 540 (1) 32:3 550 (1) 39:1 550-plus (1) 66:11				
<b>6</b>				
6 (1) 26:13 60s (1) 36:9				
<b>7</b>				
70s (2) 35:21;36:9 73790 (1) 87:15 73816 (1) 89:15				
<b>8</b>				
8 (1) 64:25				
<b>9</b>				
9 (2) 20:22;82:7				